

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

UNITED STATES OF AMERICA )  
Plaintiff, )  
v. ) Criminal No. 21-cr-0036-ELH  
JACKY LYNN MCCOMBER )  
Defendant. )

Baltimore, Maryland  
January 9, 2024  
10:03 a.m.

THE ABOVE-ENTITLED MATTER CAME ON FOR  
TELECONFERENCE  
BEFORE THE HONORABLE ELLEN L. HOLLANDER

A P P E A R A N C E S

On Behalf of the Plaintiff:  
JEFFERSON M. GRAY, ESQUIRE

On Behalf of the Defendant:  
PATRICIA RICHMAN, ESQUIRE  
CRYSTAL WEEKS, ESQUIRE  
ALLI KATZEN, ESQUIRE

Also Present:  
JAMES PINE, ESQUIRE, NSA-OGC  
AGENT HOLLY PEACY, NSA-OIG  
AGENT JULIE DAVIS, NSA-OIG

(Computer-aided transcription of stenotype notes)

Reported by:  
Ronda J. Thomas, RMR, CRR  
Federal Official Reporter  
101 W. Lombard Street, 4th Floor  
Baltimore, Maryland 21201

1 (10:03 a.m.)

2 **THE COURT:** Good morning, everyone. This is the case  
3 of United States of America v. Jacky McComber, Criminal Number  
4 ELH-21-036. I am Judge Ellen Hollander.

5 Do I have a court reporter?

6 **THE COURT REPORTER:** Yes. Judge Hollander. It's  
7 Ronda Thomas.

8 **THE COURT:** Thank you so much, Ms. Thomas.

9 Now let me ask for the Government, who is present?

10 **MR. GRAY:** Jefferson Gray from the U.S. Attorney's  
11 Office on behalf of the United States. Also with me are Jim  
12 Pine from the Office of General Counsel and then Holly Peacy  
13 and Julie Davis who are both agents with the NSA Office of the  
14 Inspector General.

15 **THE COURT:** Can you spell Ms. Peacy's name, please.

16 **MR. GRAY:** P-E-A-C-Y.

17 **THE COURT:** Thank you so much.

18 For the defense, who is on the line, please?

19 **MS. RICHMAN:** Good morning, Your Honor. This is  
20 Patricia Richman from the Office of the Federal Public  
21 Defender, and I'm joined today by Crystal Weeks and Alli  
22 Katzen.

23 **THE COURT:** Okay. From Weil Gotshal.

24 **MS. RICHMAN:** Yes, Your Honor.

25 **THE COURT:** Okay. We had a telephone conference on

1 discovery matters on January 5th. Obviously that was last  
2 week, today is January 9th of 2024. We did not finish that  
3 conference when -- I believe we were doing it over lunchtime  
4 roughly from 1:00 -- I thought it would be finished by 2:00 and  
5 we weren't finished, and Mr. Gray and I had another matter in  
6 court. So I think we recessed to approximately 2:11 or  
7 something like that, and we said we would resume today.

8 But in the interim, if my recollection was correct, there  
9 was some homework that was going to be done about availability  
10 for certain defense requests. And I don't know that there was  
11 enough time for counsel to actually go to NSA, but that had  
12 been contemplated, to look at I believe 471 emails in PDF  
13 format which would not then be searchable by a term.

14 I don't want to be the one summarizing necessarily, but  
15 that was one of my takeaways.

16 We were going through the defense letter of January 4,  
17 2024, so that was one day before the conference, I believe  
18 that's ECF-401. And then there were points about that that we  
19 were -- and I say we, of course I don't mean me personally, but  
20 all of us. There were issues about some of the requests that  
21 we were going to be discussing.

22 And then also last night, I can't remember exactly the  
23 time, but somewhere in the neighborhood of 11:00 last night the  
24 Government filed ECF-404 regarding today's deadline for  
25 responding to some of the disputes with the hope of having them

1 narrowed. So we have a number of things to discuss today.

2 I don't have an order of preference. Does anybody wish to  
3 begin?

4 **MS. RICHMAN:** Your Honor, this is Patricia Richman.  
5 Not on substance, but I just wanted to flag at the outset of  
6 this call that I have a sentencing at noon, a substantive issue  
7 has arisen that I need to advise my client about before  
8 sentencing. So I will have a hard stop on this call at 11:10,  
9 so I can get over to lockup. And I apologize for the  
10 inconvenience.

11 **THE COURT:** Not a worry. And I sure hope we're done  
12 before that.

13 Okay. So is there anything, well, Ms. Richman, you have  
14 the floor so to speak. Would you like to supplement anything I  
15 said?

16 **MS. RICHMAN:** No, Your Honor. We have not heard from  
17 the Government yet about setting up a time for us to go to NSA,  
18 and we have not gone to NSA yet. We are interested to hear,  
19 you know, it's our hope that on today's call the people from  
20 NSA can illuminate sort of what the status of materials have  
21 been gathered but not reviewed or produced, as of that sort of  
22 January 2022 timeline, so that we can define the narrow scope  
23 of inquiry that can be made in response to our request.  
24 Because we are, you know, we are very interested in bringing  
25 this to a close, finding a resolution either, you know,

1 learning from the Government that they've given us what they've  
2 got, or they would be able to do so by date certain.

3 So that's what we're hoping to resolve during today's  
4 call.

5 **THE COURT:** Okay. Mr. Gray, anything you want to say?

6 **MR. GRAY:** Your Honor, just to recap sort of where we  
7 stood last time around. We had begun going through the list of  
8 four items that were in the letter that's ECF-401. We'd had  
9 discussion about the performance evaluations, which is this  
10 first item. I had indicated that we had no reason to believe  
11 there were any signed or executed performance evaluations or  
12 any of the draft performance evaluations beyond what had  
13 previously been produced.

14 In addition, there's the whole issue, as Your Honor noted  
15 last time around, this applies to item two as well, that since  
16 the issue here is not whether the Ironbridge contract -- and  
17 the other 14 or so people working on the Ironbridge contract  
18 performed their job effectively, these performance evaluations  
19 are of -- to call it dubious materiality is probably an  
20 understatement, if anything. We were discussing the status  
21 reports. I think we were just beginning to reach item three.

22 And as to the emails, however, we had, I believe, reached  
23 a consensus on the emails that the defense was going to take  
24 advantage of the opportunity they were previously offered back  
25 in December to go out there and review at least the emails that

1 were addressed to, that were sent by the Defendant, or they  
2 were addressed to her and a small group of others. It was -- I  
3 mean, my assumption is they would advise us -- well, at any  
4 rate. . .

5 **THE COURT:** So the question is how soon could that be  
6 made available to the defense?

7 **MR. GRAY:** Yeah, and I think the NSA people can  
8 address that, and I think it can be made available with  
9 reasonable promptness.

10 But, Mr. Pine, would you like to address that and/or  
11 Ms. Peacy? Since Ms. Peacy is the one who will actually sort  
12 of sit there and be present in the general office while the  
13 person from the defense on is onsite.

14 **MR. PINE:** What needs to happen is that they'll  
15 request a one time read-in be done, and that means that  
16 they'll -- we'll get the information regarding whichever  
17 attorneys are coming out. And I'm not clear on how many are  
18 planning on coming out. And we'll have them fill out the  
19 forms, which would give them a limited, like, we call it a one  
20 time read-in. They're read into a secret level of information  
21 to allow them to review these materials in case there is any  
22 classified information in them. And then they'll be read-out  
23 at the end of the time they're here.

24 **THE COURT:** I don't want to be -- what does that mean,  
25 read-out and read-in?

1           **MR. PINE:** You sign that you're aware of all of the --

2           **THE COURT:** Oh.

3           **MR. PINE:** -- it's a couple pages, explaining that  
4 that is potentially secret material, and that you're being  
5 allowed access to it with the understanding that you won't  
6 share it.

7           **THE COURT:** But what if they want copies?

8           **MR. PINE:** Well, if they want copies, they'll identify  
9 them and those will then have to be submitted for redaction  
10 before the copies are provided. And, again, we'll be redacting  
11 names --

12           **THE COURT:** Okay. Can they take notes while they're  
13 there? For example, I'm just making something up. I mean,  
14 what you think is important and they think is important could  
15 be very different. You're going to -- from what I learned  
16 before, for example, names get redacted. But they might be  
17 interested in content if it's just, theoretically, it said  
18 something -- Ms. McComber was sent an email about she had  
19 scheduled 10 interviews with prospective Ironbridge employees.  
20 Are they going to be able to write a note that they can then,  
21 in the meantime, before NSA -- and this isn't a criticism --  
22 goes through its process to release this information, they want  
23 to write a memo to me and say in an email dated X, Ms. McComber  
24 said Y.

25           Are they going to be able to do that?

1           **MR. PINE:** Again, their notes will have to go through  
2 a redaction process as well, a review and redaction. But we  
3 can prioritize that.

4           **THE COURT:** What if it's work product?

5           **MR. GRAY:** Your Honor, if I may address that, Your  
6 Honor. I mean, they would not -- well. Every time I go out  
7 there I can't take my notes with me when I leave because they  
8 have to go through classification review and redaction.

9           So, for example, when I went out there and spent a full  
10 day out there around the end of November, very beginning of  
11 December, I still have not received my notes back from that  
12 time that I was out there because they are still in the queue.  
13 So the idea that I think was presented, and perhaps in the  
14 Defendant's original email to me on last Thursday or Wednesday,  
15 that they wanted the stuff by January the 29th is, quite  
16 frankly, simply fanciful.

17           **THE COURT:** But this is the problem. I want this case  
18 to go forward with a hard deadline we have of the sentencing on  
19 March 7th. I don't mean to be rude or difficult. But I just  
20 can't deal with NSA's -- they have other things on their plate,  
21 I get it. But I'm just not concerned about those. I need this  
22 case to be finished. And I can't wait for three months to get  
23 the material if there is anything, and I'm not suggesting there  
24 is, it may not be anything of use. But if there is, I have to  
25 figure out, Mr. Pine and Ms. Peacy, what we're going to do to



1 expedite? We're just out of time.

2           **MS. RICHMAN:** Your Honor, this is Patricia, if I could  
3 be heard briefly on this. You know, we know now that Mr. Gray  
4 has gone and reviewed all of these emails himself. We know  
5 that he identified a subset of these with, you know, different,  
6 either "to" or "from" Ms. McComber or with a list of  
7 recipients. That was in early December. I think, my  
8 understanding, December 21st was for Mr. Gray to go ahead and  
9 produce that set of 471.

10           My concerns here with the process we're contemplating,  
11 we're happy to go and review and do the work, but it does seem  
12 like this is going to further attenuate things. Seems like  
13 we'll go do our review, we'll make notes that we won't be able  
14 to use in our memo, which is due I think February 6th, until  
15 they've cleared NSA review.

16           I would like to know whether the Government is committing  
17 to produce the emails that we identified during that review  
18 because in prior letters they told us that they weren't  
19 committing to produce anything to us, even after Ms. Derrow's  
20 review, which was part of the reason we decided we needed to go  
21 to court before we completed that.

22           This just seems like a very attenuated process, and it's  
23 going to take up a lot of resources. I say resources' time,  
24 Ms. Peacy's time.

25           I just wonder whether it would be more efficient to simply

1 produce the subset that Mr. Gray identified in early December  
2 because that is there. Maybe the eight hours that Ms. Peacy  
3 would spend in a room with us or 16 hours could be spent just  
4 checking those for, you know, the need for even redacting them.

5 **THE COURT:** Mr. Pine, that's accurate, isn't it?

6 (Overlapping speakers.)

7 **MR. GRAY:** Your Honor, Your Honor, I'm sorry. Just  
8 about everything Ms. Richman just said was a mistake or  
9 inaccurate. So I have to address that first.

10 First, she began by saying I had gone out there and  
11 reviewed all of the emails. We discussed this, I think, both  
12 in the hearing on the 21st and probably in the last conference  
13 call as well, that I said that the full day that I spent out  
14 there originally was sufficient for me doing -- pretty close to  
15 an email-by-email review -- to review the first three and a  
16 half months' worth of emails, which is about a fifth of the  
17 overall time period.

18 However --

19 **THE COURT:** When you say a bunch of emails, what time  
20 period are you talking about?

21 **MR. GRAY:** That's from when she started as program  
22 manager in mid-March of 2016 through the end of June of 2016.  
23 Although that, in terms of the time period, is about a fifth of  
24 the total time period. It's more than that, I'm sure, in terms  
25 of the overall number of emails that she wrote or that were

1 sent to her and a small group of others. Because the volume of  
2 those emails dropped so dramatically, certainly by, like, July  
3 31st and certainly by, like, September the 30th. So --

4 **THE COURT:** You have to put years on your conversation  
5 because this is a record and nobody reading this is going to  
6 know what you're talking about.

7 **MR. GRAY:** Sure. September 30th, 2016.

8 **THE COURT:** Okay. Thank you.

9 **MR. GRAY:** Right. Now, in terms of the emails that I  
10 had mentioned at the hearing, which were the roughly I think  
11 171 or so that she sent herself and the other 289 that she sent  
12 to other people, we discussed this at the last conference call.

13 As I was leaving the courthouse with Mr. Pine, I said,  
14 "How long would it take us just to get those produced," and his  
15 answer to me was, "Could be a couple of months."

16 So that was something that I absolutely wanted to make  
17 sure the Court understood at the very beginning of the last  
18 conference call and that's when we discussed it.

19 So the pitch I made the last time around was given that  
20 doing what I would call just an *in toto* production of any email  
21 that she sent or that was received by her was going to be  
22 pretty time consuming because, Your Honor, you haven't seen  
23 what these redacted pages look like. I mean, a single page may  
24 have, because of the names and everything else, it may have 15  
25 or 20 redactions on it. It's a painstaking, time-consuming

1 process.

2 And so what I suggested was, and this was based on my own  
3 review, that I know that probably many of those 171 emails that  
4 she actually wrote over this 19-month period are of no  
5 significance whatsoever. And so I suggested that what I  
6 thought still made sense was for them to take advantage of the  
7 chance to go out there and to go through those emails, boil it  
8 down to something more reasonable, like, maybe 60 or so, and  
9 then if we can do that. And then there's also the ones that  
10 were sent to her, that I think probably a lot of those she was  
11 basically just being copied on and that 299 might overall be of  
12 less significance.

13 **THE COURT:** Can I interrupt for a second --

14 **MR. GRAY:** No, I'm sorry.

15 **THE COURT:** Excuse me, I was just confused because I  
16 thought that -- I'm trying to understand why this information  
17 wasn't produced before the trial. So much material was  
18 produced before the trial, but why wasn't this part of what was  
19 produced during the trial?

20 **MR. GRAY:** Well, Your Honor, the short answer to that,  
21 I'm going to give my understanding of it and then Ms. Peacy,  
22 who actually worked on the production can confirm it.

23 What was done, and this was basically accomplished for all  
24 of the high side emails by all of the named custodians, was  
25 that we ran keyword searches on those, and we did produce the

1 ones that were turned up on those keyword searches. And as I  
2 mentioned before, there are actually three Government exhibits  
3 at trial that contain a number of things.

4 **THE COURT:** Because this is important. Because this  
5 is what I want to be clear about because -- and if this is  
6 incorrect, you need to tell me. But is it accurate that of  
7 this tranche of emails, to use Ms. Richman's word on other  
8 occasions, some of this has already been produced? It's not  
9 like all of this would be brand new necessarily; is that  
10 correct? They may have been produced by virtue of some other  
11 methodology.

12 **MR. GRAY:** Yeah. Your Honor, my understanding is  
13 that, yes, that is absolutely correct. And as I've indicated,  
14 and I think it's probably at least 100 pages, maybe 120, 130  
15 pages of high side emails are already put in the trial  
16 record --

17 **MS. RICHMAN:** Your Honor, if I could be heard?  
18 (Overlapping speakers.)

19 **THE COURT:** Whoa, whoa, only one of us at a time  
20 because the court reporter is super human, but she still can  
21 only get one person speaking at a time.

22 **MR. GRAY:** Right. Now, the person who has the  
23 detailed knowledge --

24 **THE COURT:** Wait. I'm trying to clarify. So some of  
25 what --

1           **MR. GRAY:** We could clarify it if we heard from  
2 Ms. Peacy.

3           **MS. RICHMAN:** Your Honor, I would like to be heard.

4           **MR. GRAY:** No --

5           **THE COURT:** Let me hear Ms. Peacy. First, Ms. Peacy,  
6 you heard what I said?

7           **MS. PEACY:** Yes, ma'am.

8           **THE COURT:** You were involved apparently, I didn't  
9 know you were involved, but I'm told you were involved in this  
10 process. So this identification of emails that we're now  
11 discussing, have some of these already been produced to the  
12 defense?

13           **MS. PEACY:** Yes, ma'am. Her classified, top secret,  
14 secret, and confidential emails related to any of the defense  
15 search terms that we received in August of 2022, were produced.  
16 They were produced to the AUSA's office on the 10th of January  
17 of 2023.

18           What was not produced was the search terms for her UFOUO  
19 emails. And the reason that was not produced is because we  
20 received an email on the 18th of January of 2023, telling us  
21 that they were moving forward with whatever had been produced  
22 at that time and to stand down.

23           **THE COURT:** Can you give us that abbreviation again?

24           **MS. PEACY:** Oh, sorry. AUSA attorney's office.

25           **THE COURT:** No, no. You said US --

1 MS. PEACY: I said AUSA.

2 MR. GRAY: UFOUO.

3 MS. PEACY: Oh, thank you. UFOUO. It's Unclassified  
4 For Official Use Only.

5 THE COURT: Okay. Thank you. That's what I wanted  
6 the record to clarify.

7 I don't know if that answers the question. It's helpful.  
8 Some of it, in other words, may have already been provided.  
9 What the defense is seeking to look at now, what you're saying  
10 is to the extent as of January 10 of 2023, based on search  
11 terms that were requested by the defense, it may encompass some  
12 of what we're now discussing?

13 MS. PEACY: Yes, some have already been provided,  
14 ma'am.

15 MR. GRAY: Well --

16 MS. RICHMAN: Your Honor, may I speak?

17 (Overlapping speakers.)

18 THE COURT: No, no, whoa, whoa. I'm going to hang up  
19 and this conference is going to come to an end if you cannot  
20 follow my instructions which is one person at a time. Each of  
21 you will have all the time, subject to your own limitations of  
22 other needs, you will each have adequate time to address the  
23 issues. But we have to have a method of doing it and it cannot  
24 be with multiple people talking at the same time. I know that  
25 you can't see each other so you can't tell who's about to talk,

1 but you can hear each other.

2 I've never once not let everyone have their moment. So  
3 I'm not changing that, but you've got to work with me. I can  
4 only hear one of you at one time, and I can only ask the court  
5 reporter to take down one person at a time.

6 I don't know that Mr. Gray was done so I'm going to let  
7 him finish and then I will call you on, Ms. Richman, and you  
8 will have all the time that you want.

9 Mr. Gray, what did you wish to say on this topic?

10 **MR. GRAY:** Yeah, what I really wanted to do was just  
11 clarify with Ms. Peacy were all of the -- were what was  
12 produced on January 10th to the U.S. Attorney's Office --

13 **THE COURT:** January 10th of 2023.

14 **MR. GRAY:** -- right, did that consist of a complete  
15 review of -- was that just of A) the high side emails of just  
16 Ms. McComber, or was it sort of all of the named individuals,  
17 and B) was that a complete review of all of those emails based  
18 on the search term.

19 And the next thing I want to say is, I want to confirm  
20 whether that production, which got produced right at the time  
21 the defense said "we're ready to go to trial" and when we were,  
22 I think, eight days away from commencing jury selection,  
23 whether we then also produced that to the defense in light of  
24 the representations that they made on January 10th of 2023,  
25 that we're ready for trial and we're done. So I'm still going



1 to need to confirm that.

2 But, Ms. Peacy, can you clarify for us on the record,  
3 first, who all the emails had been searched as part of that  
4 last production using keywords?

5 **MS. PEACY:** The production I just spoke to I was only  
6 speaking to Ms. McComber's emails. But also around that same  
7 time, on either the 10th or 11th of January of 2023, production  
8 was also provided for Kristin Mair, Jonathan Smith, Regina  
9 Shirley, Jason Clark. That's it. For the search terms for all  
10 of their emails and files as well. So they were all provided.

11 The only thing that was not provided were Ms. McComber's  
12 UFOUO emails on those search terms and none of her classified  
13 emails were provided at that time.

14 (Overlapping speakers.)

15 **THE COURT:** Who chose the search words?

16 **MR. GRAY:** That was defined jointly between the  
17 Government and Mr. Ahlers.

18 I'm sorry, what?

19 **THE COURT:** You have the terms that he wanted?

20 **MR. GRAY:** I'm sure we have them somewhere. This was  
21 obviously handled by Mr. Cooch and not me.

22 **THE COURT:** But I'm saying, to your knowledge, did  
23 Mr. Ahlers get the terms that he wanted?

24 **MR. GRAY:** Yes.

25 **THE COURT:** Okay.

1           **MR. GRAY:** I'm sorry, Ms. Peacy, you said Kristin  
2 Mair, Jonathan Smith, Regina Shirley, and I think there was one  
3 more?

4           **MS. PEACY:** Jason Clark.

5           **MR. GRAY:** Well, I'm still a little bit -- I'm trying  
6 to make sure my understanding is correct and the record is  
7 clear. So you've been drawing a distinction between  
8 Ms. McComber's classified emails and her UFOUO emails. Can you  
9 explain that distinction to us, Ms. Peacy?

10          **MS. PEACY:** Yes, so the UFOUO emails, those  
11 unclassified emails were pulled off separately. They were  
12 originally searched. We did pull on the search terms but they  
13 never went to redaction and weren't sent anywhere to be  
14 redacted because right around that same time is when they  
15 decided they were going to let her come in and select the  
16 emails her, which she did over two days.

17          **THE COURT:** I'm sorry, by her, just so the record is  
18 clear, you mean Ms. McComber?

19          **MS. PEACY:** Ms. McComber, yes. She selected emails  
20 over two days, Ms. McComber did. We were in the midst of  
21 pulling those emails when a decision was made that we were  
22 going to move forward with the trial with whatever we had  
23 redacted and produced at that time, which is why everything  
24 stopped.

25          **THE COURT:** Do you still have a record of what she

1 identified?

2 **MS. PEACY:** Yes, ma'am, I do.

3 **MR. GRAY:** We do. That's the 1,315 emails that we  
4 spoke about frequently. And as a matter of fact, I think I  
5 have now received a copy of her notes on that that went through  
6 redaction. And I'm glad to tender that to the Court and  
7 opposing counsel because it will certainly -- it's already been  
8 seen, I think, by Ms. Derrow. But it will give you a clear  
9 sense as to just, especially as time goes on, how few emails  
10 she was sending out that she drafted or that were directed  
11 specifically to her.

12 **THE COURT:** Okay. Are you done, Mr. Gray?

13 **MR. GRAY:** I think so, Your Honor. I'm likely to have  
14 some rebuttal points to whatever Ms. Richman --

15 **THE COURT:** But for right now. I just wanted to make  
16 sure you had time to say what you wanted.

17 Okay. Ms. Richman.

18 **MS. RICHMAN:** Yes, Your Honor. I just have to start  
19 by saying I'm a bit disturbed that my client's notes and  
20 impressions of the emails she reviewed were produced to the  
21 Government without them going to us. That, I think, is  
22 privileged. So I'm interested to learn more about that and to  
23 get a copy of those. I did not know -- and for that reason the  
24 same concern that any work product that we produce at the NSA,  
25 will NSA then head it over to the Government beforehand?

1       So that's the first time I'm learning that Mr. Gray was  
2 ever going to see my client's notes and impressions of those  
3 emails. I'm interested to see that production.

4       (Overlapping speakers.)

5       **MS. RICHMAN:** I would like to finish before Mr. Gray  
6 interrupts me. I'm sorry that I have been interrupting, Your  
7 Honor. It's often difficult to get a word in edgewise in these  
8 conversations.

9       **THE COURT:** I don't think that's accurate at all. At  
10 all.

11       **MS. RICHMAN:** Your Honor, the record will show what it  
12 shows, I would like to continue.

13       Your Honor, with respect to these emails, what I'm hearing  
14 is that search terms were sent, were run over the high side  
15 emails. These are not the high side emails. These are the  
16 UFOU. Probably I got that acronym wrong.

17       The Government, to the extent that it wishes to  
18 deduplicate the set against what has already been produced, we  
19 would gladly have them do so. We are looking for any way we  
20 possibly can to make this more efficient and to streamline it.  
21 Our requests for any discovery related to loss, and it's not  
22 just these emails, it's the other emails in our memo as well,  
23 that we submitted has been outstanding since August 3rd. The  
24 Government did not take itself to NSA to look at any subset of  
25 these materials until December, and it started with the emails.

1 At the November hearing where we raise it, we reference both  
2 the emails and other materials.

3 I'm hearing from Ms. Peacy that four of the 11 priority  
4 custodians, who were identified as potentially having  
5 responsive material, had their materials searched for key terms  
6 and produced. I'm wondering about the remaining set, eight  
7 custodians who were identified as priority custodians, and  
8 whether their materials are gathered, and whether they can be  
9 searched for the discrete items that are remaining.

10 At a certain point, Your Honor, our client has a due  
11 process right to a fair and timely resolution of this case.  
12 Our discovery requests on this have been outstanding for many  
13 months now.

14 If, in August, the Government had said, well, look, there  
15 were these emails, there were these custodians, we'll take a  
16 look at those, we would not be having this delay and this  
17 discussion. I'm concerned about the amount of time this is  
18 taking. Even if in December the Government had begun the  
19 process of producing emails that had not been produced before,  
20 we would be so much further along than we are now.

21 I am incredibly concerned about the length of time it has  
22 taken the Government to even attend to these discovery requests  
23 and the amount of delay that it is taking to even determine  
24 what the next steps are.

25 My impressions of the December 21st hearing was that the

1 Court concluded that Ms. McComber was entitled to certain  
2 materials that could still be in the Government's custody and  
3 control and that the next step we were going to was what  
4 exactly the Government had to search to -- search for in  
5 connection with that.

6 And I'm anxious for a resolution here, but I'm also  
7 anxious about this delay. I think it does nothing but  
8 prejudice my client.

9 **THE COURT:** I just have to say your comments about the  
10 delay I find really surprising and disturbing --

11 **MS. RICHMAN:** Your Honor --

12 **THE COURT:** No, no, now it's my turn and I'm in  
13 charge.

14 The whole scope of this very much has felt to me all along  
15 like we were starting over, and I couldn't be more clear about  
16 the fact that we are not having a do-over. Any issues that  
17 took place, anything regarding the trial will be resolved by  
18 the Fourth Circuit. But I have given you a lot of latitude. I  
19 gave the defense a lot of latitude in the first place.

20 And your argument, as I've understood it, is that these  
21 are relevant to show that, in fact, they concern the amount of  
22 the Government's loss; and much of this strikes me as  
23 incredibly tangential to the hope of finding something that  
24 will support your claim that she did more than the Government  
25 is giving her credit for. And now we've been on this

1 incredible fishing expedition, which I largely countenanced.  
2 But for you to suggest this is, like, the Government's fault,  
3 I'm really troubled by that assertion.

4 There's a lot of explanation, shall we say, most of which  
5 I think are in the record as to what has accounted for some of  
6 the delay. I think -- I feel everybody has done their best to  
7 work expeditiously considering this is not -- it's ironic, I  
8 was thinking about this this morning. Mr. Gray is in the  
9 position the defense usually is in, with one defense attorney  
10 and an army of federal prosecutors. Now he's getting a taste  
11 of what it's like to be on the other side by himself, and  
12 there's an army of defense attorneys.

13 You've created, and I know you have justified it,  
14 Ms. Richman, but this is a lot of work, and not in an ordinary  
15 situation. And it's difficult, but there are hurdles that have  
16 to be overcome. And I'm just troubled by the fact that you're  
17 now waiving this flag of delay, when the delay really was  
18 occasioned by the defense in the first place from my  
19 perspective.

20 **MS. RICHMAN:** Thank you, Your Honor.

21 **THE COURT:** I find that very troubling. Now, let's  
22 get the work done.

23 **MS. RICHMAN:** I just want to make a record on that  
24 point, please. Your Honor --

25 **THE COURT:** I couldn't hear you?

1           **MS. RICHMAN:** I'm sorry, Your Honor. May I make a  
2 brief record in response, please?

3           **THE COURT:** Go for it.

4           **MS. RICHMAN:** Thank you, Your Honor. We timely lodged  
5 our discovery requests with the Government on August 2nd, 2023.  
6 We have been available to work with the Government to narrow  
7 those discovery requests to issues of loss.

8           If the Court wishes to make a ruling that we are seeking  
9 materials that are not relevant to loss and that we are not  
10 entitled to, we will take the Court's ruling. But we have been  
11 trying very hard for many months to work this out with the  
12 Government --

13           **THE COURT:** I'm sorry to interrupt, but, in fact,  
14 you're right to this extent at least, most of this didn't  
15 involve me, and when it did, I jumped on it.

16           **MS. RICHMAN:** We appreciate that, Your Honor. Thank  
17 you.

18           **THE COURT:** But I am trying to look at it as broadly  
19 as I can. I'm not going to make the ruling you're asking for.  
20 I've been trying to accommodate your position that these are  
21 relevant to show whatever it is you've argued they might show.  
22 And on that basis, I've been willing to give you at least what  
23 can reasonably be provided, narrowed, because some of your  
24 materials I'm having a hard time grasping what they have to do  
25 with Ms. McComber's work, as opposed to the contract work,



1 which is a very different animal. And the contract work itself  
2 was never in any way impugned. So there's a difference, and we  
3 talked about this last time. It's on the record from  
4 January 5.

5 **MS. RICHMAN:** Yes, Your Honor. We discussed it on  
6 December 21st and on January 5th, what the relevance of these  
7 are to our theory of loss. We tried very hard to work with  
8 Mr. Gray and not bring discovery disputes before the Court.

9 **THE COURT:** And I appreciate that --

10 **MS. RICHMAN:** We appreciate your intervention in  
11 November, but I think the December 21st hearing makes  
12 absolutely clear that the Government took no steps to respond  
13 to our specific request on loss beyond a discrete matter that  
14 came up around stoplight charts and going to look at the emails  
15 in the first week of December. These are the delays I'm  
16 concerned about. I think if the Government had been working  
17 with us on this, from August 3rd forward, we would be in very  
18 different shoes.

19 **MR. GRAY:** All right. Your Honor, I need an  
20 opportunity to respond to that now.

21 **THE COURT:** Okay.

22 **MR. GRAY:** Let me start with what Ms. Richman began  
23 talking about at the beginning where she was getting very  
24 excited about the idea that her client's, as she put it, work  
25 product, had been in the possession of the Government and not

1 disclosed to the defense.

2 For one thing -- well, first thing is what these notes  
3 are, they do not, as Ms. Richman suggested -- she can put this  
4 worry aside -- they do not contain any impressions or any  
5 notes. They are simply a list of 1,315 emails that  
6 Ms. McComber indicated she wanted us to produce after she was  
7 out at the NSA on December 7th and December 9th of 2022. As we  
8 indicated, have indicated a number of times, this 1,315 emails  
9 would take -- it would take months to go through the  
10 classification and redaction and review process on that.

11 Moreover, as you will see, what I tendered to you, I'll  
12 try to do it later today but, as always, I have lots of things  
13 going on, you can see specifically it lists dates of emails, it  
14 lists who was the sender, and it lists who was the receiver.  
15 You'll see that probably a couple hundred of these are ones  
16 where Ms. McComber was simply -- simply received an email that  
17 was sent out either to everyone at NSOC or everyone at NSA.

18 So there's nothing in terms of, like, her impressions,  
19 aside from just identifying she wanted these 1,300 emails,  
20 which theoretically would imply something about their  
21 significance, except for the fact that you can tell by looking  
22 at the list that many of these are not significant. That's all  
23 there is in terms of that.

24 I want to be clear, I think Ms. Peacy was drawing a  
25 distinction between the high side and the UFOUO emails. I

1 thought all of the emails we were talking about here are high  
2 side emails. It's just some of them are UFOUO and some of them  
3 actually carry an expressed classification.

4 Is that understanding right, Ms. Peacy?

5 **MS. PEACY:** Yes, that's correct. They all came from  
6 the high side. I was speaking for the classifications of the  
7 emails.

8 **MR. GRAY:** Right, okay.

9 **THE COURT:** I would like to address, Mr. Gray, the  
10 contention of the defense that you're responsible, essentially,  
11 for the delay that's been occasioned since August 2nd or so,  
12 that when this request was made you've sat and done very little  
13 to respond.

14 **MR. GRAY:** Your Honor, we had a conference, an  
15 in-person conference about this on August 24th. And  
16 Ms. Richman has seemed to indicate that she thinks that I  
17 completely endorsed all of the requests for what they had put  
18 forward in the letter of August 2nd. I'm quite confident I  
19 never did that because, among other things -- well, I'll not go  
20 there.

21 Let me think for a moment.

22 **THE COURT:** Can I ask you this while you're thinking,  
23 I just want to ask this: We all know the history and the  
24 change of counsel and the trial had already taken place, and  
25 there had been a voluminous amount of production of the

1 exhibits in discovery before Ms. Richman and the Weil Gotshal  
2 attorneys entered the case. My understanding was that when  
3 that happened, Mr. Gray, that at least what I thought had taken  
4 place is that you actually were -- I don't know what the right  
5 word would be -- I'll say of help, being essentially informing,  
6 I'll use that word, informing new defense counsel by way of  
7 providing materials that had already previously been provided  
8 to Mr. Ahlers. But maybe my understanding isn't correct. But  
9 that, in itself, was a big effort on your part. You were  
10 redoing what had already taken place. And it is what it is.  
11 And I'm not saying that you get a medal for that. But that's  
12 my understanding.

13       You didn't just say, well, you're on your own and go find  
14 Mr. Ahlers' file. I thought you worked with defense counsel to  
15 bring them up to speed as best you could.

16       Is that correct or not correct?

17       **MR. GRAY:** Yes, to go back to that, as I recall it,  
18 our initial idea is they would obtain what they needed from  
19 Mr. Ahlers, that was everything we produced to him. They were  
20 going to want to look through that and be confident that was  
21 what was in his possession at the time of the trial.

22       At some point in the summer of 2023, Ms. Richman got in  
23 touch with us, I tend to think it was maybe late June, and  
24 asked us -- expressed some concerns about whether they had  
25 really gotten everything from Mr. Ahlers that we had produced.

1 So she asked, basically, could we duplicate that production.

2 So we agreed to do that.

3 We put it all on a thumb drive, which we gave to them,  
4 this is, like, in the early July time frame, I think. And then  
5 I think it was about a month later that we heard from  
6 Ms. Richman that they couldn't make the thumb drive work, and  
7 they had some problem with it. We got the thumb drive, again,  
8 we couldn't see any problem with it. But we responded to  
9 whatever concerns they had and produced anything they asked for  
10 at that time.

11 I should note here, Your Honor, that also in addition to  
12 no longer having Mr. Cooch with me, Jermain Davis, who is the  
13 paralegal who handled this matter and right up to trial, and  
14 during trial, left the Government in April. So he was not  
15 available to us either.

16 Now, then in August they came in with the August 2nd  
17 letter, and I will say now that my reaction to the August 2nd  
18 letter was that -- I thought the August 2nd letter was asking  
19 for things that many of which had already been produced, many  
20 of which had been determined did not exist. And the only thing  
21 that I was somewhat receptive to trying to do by way of  
22 additional discovery in August was with regard to the email  
23 that had been identified by Ms. McComber back in December.

24 And as I believe I made plain to the defense at the time,  
25 the reason why when they kept saying, can you certify to us

1 that there is nothing of exculpatory value that is out there?  
2 Since I was not involved in the original email review and  
3 production, I couldn't make any statement about what was in the  
4 email beyond what I knew from the reports that the AUSA  
5 MacDonald and OIG Lori Hazenstab, that they had seen nothing  
6 that they considered of significant volume to the defense.  
7 And, if anything, they believe that overall particularly the  
8 overall pattern of the emails and the character of those emails  
9 was actually extremely helpful to the Government.

10 Now, it was also in that August time frame that the  
11 defense began raising what they'll first refer to as the  
12 personnel file. And when that came up, I mean, I first told  
13 them, I certainly never asked to see any personnel file of hers  
14 out of the NSA and was even a little doubting that there would  
15 be such a thing because she was a contractor and that turned  
16 out to be the case.

17 But once they clarified that it was the security file they  
18 were looking for, again, I thought their claim of relevance and  
19 materiality for the contents of that security file would be  
20 maybe questionable.

21 But for, you know, from Ms. Richman's claim that I never  
22 went out there until December, actually, the first time I went  
23 out there was September 30th, when I spent a day going through  
24 the two volumes of the security file that were where they were  
25 supposed to be, at a time when I had a massive appellate brief

1 due in the Fourth Circuit four days later. So for me to go out  
2 there, that was not a small ask at that time.

3 And then it turned out, after I gave a summary back to the  
4 defense as to what I had seen when I was out there -- because,  
5 once again, I couldn't get copies made promptly because they  
6 have to go through this whole process. I couldn't even bring  
7 my own notes out. They indicated that they thought there was  
8 something else I had missed --

9 **THE COURT:** Who is the "they"?

10 **MR. GRAY:** Ms. Weeks and Ms. Richman. It turned out  
11 that they had been in possession of documents that were  
12 obtained by the Defendant by an FOIA request back in February  
13 of 2020, that had led them to think that there might be some  
14 other stuff in the security file that might be helpful. They  
15 didn't tell me that in August. They didn't mention that they  
16 had these things. They didn't say based on these things, we  
17 believe there's other stuff. I didn't have the benefit of that  
18 knowledge when I first went out there September 30th.

19 I then followed up with the NSA in light of that, and I'll  
20 be glad to further paper the record with all of the email  
21 traffic back and forth, because it was extensive, and the email  
22 then determined that there was another volume that had not been  
23 included in the security file. It's not clear if it was in  
24 maybe the psychological assessment section, or something like  
25 that, that was also available.

1       So once again, I went back out there I think on, like,  
2       October the 17th and spent --

3               **THE COURT:** This is 2023?

4               **MR. GRAY:** -- 2023, and spent as long as it took to go  
5       through that and figure out what we thought might be relevant  
6       from that. And as a matter of fact, it was a day that we got a  
7       conference call in this case, and I had to leave the NSA  
8       premises and go back out to my car in the parking lot so I  
9       could get my cell phone and participate in the conference call  
10      from there.

11       I mean, trying to run down these defense requests as I  
12      indicated was done I think back on November 21st, was taking a  
13      lot of my time during a period in which I had a crushing  
14      appellate deadline, that all of the attorneys that originally  
15      handled it had left.

16       So, also, Ms. Richman has tried to suggest that in  
17      addition to that -- and I can assure you, and I've already  
18      produced substantial emails, and the court has seen them in my  
19      filing of, I think, God knows, December the 20th. Believe me,  
20      there are many, many more that I could provide to the court to  
21      make the record on this. Because, quite frankly, I was  
22      infuriated by Ms. Richman's suggestions in that letter that she  
23      sent to the court on I think December 9th that I had  
24      "slow-walked" this stuff.

25       When, in fact, I had repeatedly at times when I was under



1 extreme pressure in other matters had taken the time to go out  
2 there on what I continue to regard as this fool's errand  
3 because, and I'm sure we discussed this back at the session in  
4 August, too, this fixation that Ms. Richman has on trying to  
5 get all of these, like, high side emails.

6 As I have said repeatedly, this is huge, it's reason in  
7 and of itself for denying the defense's request. We have  
8 agreed, as part of the restitution statement that -- we decided  
9 to take this position as part of the restitution statement,  
10 we'll give her credit for 75 percent of the time she spent on  
11 site. So any -- the high side emails simply consist of stuff  
12 she would have drafted while she was at the NSA. So we've  
13 already agreed 75 percent of that time you can have and the  
14 25 percent of the time that we're not agreeing to give her was  
15 the time that she either was elsewhere in the NSA working on  
16 the Silent Roar contract, or she was going to and from the NSOC  
17 site but was not present in NSOC work.

18 So why we are still having this enormous fight about these  
19 high side emails when it's pretty darn clear they will add --  
20 first, a number of them have already been produced, and a  
21 number of them have already been introduced in evidence at  
22 trial. And to say that this stuff is of marginal value in  
23 terms of establishing how much work she did when she was high  
24 side at the NSA is an understatement. Because she, herself,  
25 repeatedly testifies, what I did was care and feeding of

1 employees, circulating around and talking to people and  
2 listening to people, et cetera, et cetera. None of that leaves  
3 a trace in an email record when you're talking about an office  
4 like NSOC that is, I don't know, maybe 60 feet across. They  
5 are packed into that office.

6       So this is -- this is -- I'm sorry to have to use these  
7 terms, you can call it a wild goose chase, you can call it a  
8 fool's errand. But there's just, you know, what I -- moreover,  
9 the idea that Ms. Richman is throwing rocks at us about having  
10 stymied this process, when we set up for them, in spite of all  
11 these reasons, these high side emails aren't going to matter  
12 any significance in terms of the amount of loss, nothing of  
13 material value -- we set up multiple dates when we agreed we  
14 would have people available.

15       Mr. Pine even indicated he would come in during the week  
16 between Christmas and New Years when he was supposed to be on  
17 leave. We had set up already a day and a half with a promise  
18 of an additional full day after the Christmas date.

19       And Ms. Derrow went out there for four hours and then had,  
20 as we all know from the transcript of December 21st, then had a  
21 call with Ms. Richman at which she said, I can't run this  
22 search or that search, and then Ms. Richman said so we decided  
23 to pull her back.

24       They didn't say, why don't you stay out there for the rest  
25 of the day since you're already there, and see how much further

1 you can get, and see how much more you can learn about what  
2 these emails show.

3 I mean, that's mind boggling to me.

4 If we had done all that, yes, we would have been done with  
5 this by at least the last week after Christmas and this thing  
6 could have been further under way.

7 But the bottom line is, to be continuing to waste this  
8 kind of time on the high side emails in light of the concession  
9 we had made in our restitution statement. In light of the fact  
10 that, I mean, Ms. McComber was out there for two days, and  
11 after having done that she then obviously agreed with her  
12 counsel that I want to go to trial now without getting these  
13 things. So I think that's a pretty good reflection of how  
14 significant she considered these things.

15 Your Honor, you're right. We need to get this done. But,  
16 I mean, I think the very fact that we're having this  
17 conversation and spending this long on the line, again, you  
18 know, demonstrates that, as I indicated in my last  
19 communication to Ms. Weeks on January the 4th, that it seemed  
20 to me that what we really need to do is just do a filing with  
21 affidavits attached to it that summarizes everything that  
22 happened so it's part of the record. Yet, that's something  
23 else that I don't have time to do because we're trying to keep  
24 everything on track here.

25 And -- there's one final thing I wanted to add. It's

1 escaping me right now. But the issue of the fact that all of  
2 this supposedly is about the amount of the loss.

3 It goes back to what I said also in the last call, there  
4 are 2,000 pages of NSA investigator transcripts in which people  
5 were asked about what Ms. McComber did, and what she, herself,  
6 was asked. That's before you get to the trial.

7 Then there's a roughly 3,000-page transcript of the trial.  
8 I think the Government called -- or in total there were 25  
9 witnesses who testified, and most of who were people who worked  
10 in connection with the Ironbridge contract out at the NSA, and  
11 who gave their impressions of how much work she did. You know,  
12 that is an incredible gold mine of material for new defense  
13 counsel in this case to work with; and to continue to pursue  
14 these things just almost for the sake of a matter of form or  
15 because they feel that if we don't do this we haven't shown the  
16 necessary consciousness and diligence.

17 I mean, at a certain point in time you have to look at  
18 what's already there, which is some 32,000 pages of produced  
19 records and transcripts, of investigative transcripts, plus the  
20 3,000 pages of the trial transcript itself, you know, plus the  
21 opportunity defense counsel had at trial to ask questions of  
22 any of these witnesses about what Ms. McComber did, and what  
23 documents there might be that might evidence it in. Plus, the  
24 fact of Ms. McComber's own extensive testimony in which she  
25 could have said, you know, and I know that there's

1 such-and-such a thing that I did that would reflect the work  
2 that I did or some work that I did. There just hasn't been  
3 anything like that for the simple reason that she didn't do the  
4 work.

5 **THE COURT:** Well, thank you, Mr. Gray.

6 Now, Ms. Richman, I'm sure you want to say something back?

7 **MS. RICHMAN:** Yes, Your Honor, I'd like to note --

8 **THE COURT:** That was helpful, I think.

9 **MS. RICHMAN:** Thank you, Your Honor.

10 **THE COURT:** I think that the only thing that's  
11 bothered me so far is the suggestion that somehow this is all  
12 the Government's fault, this delay, and that's what set me off.  
13 I'll be honest that was just, I think, unfair and inaccurate.

14 We've all been working to the same goal, and there is a  
15 lot in here that I have to say, I've said it before, I thought  
16 was tangential, but I was willing to listen, of course, as I  
17 always am. And then I wasn't expecting you to start casting  
18 stones like that, Ms. Richman, I just wasn't.

19 **MS. RICHMAN:** Thank you, Your Honor. At this point,  
20 Your Honor, it's incumbent on me to make a record about what  
21 the Government's efforts have been to respond to our request on  
22 loss.

23 **THE COURT:** Just can I say one other thing?

24 **MS. RICHMAN:** Yes, Your Honor.

25 **THE COURT:** By the way, this is just important because

1 you made your point. I got your point. The record is clear, I  
2 think, and if you want to add to it by all means. Maybe the  
3 simplest way for you is to each submit something in writing so  
4 we don't have to listen to each other cast stones, blaming each  
5 other.

6 But the one thing I will say is your whole argument  
7 presupposes that you were entitled to any of this in the first  
8 place, that they were supposed to drop everything and give it  
9 to you. And that's where I was troubled. That's what I  
10 thought the conference was about, and I thought the hearing was  
11 about. It isn't a given that just because you ask for it, you  
12 get it.

13 So when you start accusing the Government of delaying and  
14 dragging its feet and not responding and not doing this and not  
15 doing that, I mean, it's not at all clear that you should get  
16 all of these things.

17 But I'd much rather -- I know you've made your point. If  
18 you wanted to submit something in writing so that the Fourth  
19 Circuit can read later, I think that's fine. You can do it at  
20 your convenience. The point I'm trying to accomplish is you  
21 have to leave soon, and I would like to get something done on  
22 the merits of these requests.

23 I personally think that I am incredibly generous in  
24 allowing some of this, I always was. I said that before.  
25 That's not news to you. I thought I was willing to give

1 Mr. Ahlers a lot more than maybe was even reasonable, but that  
2 was my ruling and I'll live by it. Now let's get the same  
3 thing done here.

4 Let's talk about the process that we're going to use to  
5 get you and your team to NSA to look at the emails.

6 **MS. RICHMAN:** Yes, your Honor.

7 **THE COURT:** I want to know from Mr. Pine or Ms. Peacy  
8 how we're doing this so we have a plan. What do the defense  
9 lawyers need to do to get this done. I cannot tolerate, I  
10 simply cannot tolerate a response by NSA once the emails are  
11 identified of a three-month delay. I just can't do it. I  
12 don't care what you have to do to make it happen quicker, but  
13 you've got to.

14 So let's talk about what's the process the defense needs  
15 to follow to get out there.

16 **MS. RICHMAN:** Your Honor?

17 **THE COURT:** Yes.

18 **MS. RICHMAN:** May I please respond to Mr. Gray? I've  
19 had no opportunity to do so.

20 **THE COURT:** No, I just said let's not use -- it's  
21 11:00. I know you think it's their fault. You made that  
22 point. If you wish to submit something in writing to cast  
23 aspersions that would be more than --

24 **MS. RICHMAN:** Your Honor, this is not just about  
25 emails. This is also about loss. So --

1           **THE COURT:** I'm trying to get there. But I'm trying  
2 to get to the first topic and then we'll go to the next topics.

3           **MS. RICHMAN:** I also wish the record to reflect that  
4 Mr. Gray in his remarks used a mocking tone --

5           **THE COURT:** He did not.

6           **MS. RICHMAN:** -- in describing -- yes, Your Honor, I  
7 believe the audio speaks for itself. And I want to say that's  
8 consistent with a pattern of ad hominem attacks against myself  
9 and other counsel and has made this extremely difficult to  
10 litigate, Your Honor. That is not the style in which I  
11 litigate. But I would like to make the record that that is the  
12 case.

13           **THE COURT:** Okay. I'm going to make the record that  
14 it's 11:01, and we're going to end this call, because you need  
15 to, at 11:10 with nothing to show for it. But if this is how  
16 you want to spend the remaining nine minutes, go ahead.

17           **MS. RICHMAN:** Your Honor, we will submit something  
18 written correcting the misstatements in what Mr. Gray just  
19 stated, but we can attend to the matters in the email now.

20           **THE COURT:** Okay. I think that's more useful. Let me  
21 get an answer to my question. I'm trying to accomplish  
22 something for the defense. What is the system we're setting up  
23 for the defense to go out to NSA and look at those however many  
24 emails we said it was ASAP? So can either Ms. Peacy or  
25 Mr. Pine tell me what they have to do.



1           **MR. PINE:** Your Honor, I have to arrange with our  
2 security people. I think what we need is some information from  
3 the attorneys coming out, mainly their full name, probably  
4 Social Security number, address, date of birth, place of birth,  
5 some personal information that we put into our system. I'll  
6 send them out the forms that they need to fill out. And I'm  
7 not sure how many people plan on coming out. If it's more than  
8 one attorney? Have they thought about that at all?

9           **THE COURT:** I don't know. But, Mr. Pine, I need that  
10 form to them by the end of the day.

11           **MR. PINE:** Yes.

12           **THE COURT:** And I need to make sure the first day they  
13 say they're available, that's the day I want them there. Is  
14 that a problem?

15           **MR. PINE:** Shouldn't be. Just because either the  
16 Inspector General has spaces that's we did it the last time or  
17 as the backup the General Counsel's Office has some places we  
18 could put them up. We have two standalone laptops that we  
19 could use so we could accommodate two different people  
20 searching or, you know, if they wanted to do two people on one  
21 laptop, that would be fine as well.

22           I just need to know how many are coming out and the  
23 particulars of the people coming out.

24           **THE COURT:** Is it possible that when I hang up, you  
25 and -- I know Ms. Richman has to go, but if we finish maybe

1 11:15, an extra five minutes she could stay on the line and the  
2 lawyers for the defense can give you the information that you  
3 need to set this up and get them out there ASAP?

4 **MR. PINE:** I have to find out what particular  
5 information we need myself --

6 **THE COURT:** Well then you can exchange phone numbers  
7 and they can call you or you can call them.

8 **MR. PINE:** Absolutely. Absolutely. And email address  
9 as well.

10 **THE COURT:** Right. And there can be no delay. I  
11 don't know how to be more clear. Once they identify what they  
12 want, Mr. Pine and Ms. Peacy, I can't use your normal system  
13 because we're in the phase now where time is of the essence,  
14 too much time has gone by, for whatever the reasons.

15 I need somebody at NSA who understands the gravity of this  
16 and who is going to put this at the front of the line. I just  
17 can't -- I cannot tolerate any delay. I can't be more clear.  
18 If they're reasonable. Now, if you come back to me and say  
19 their requests are either unreasonable or frivolous, I'll have  
20 to hear you out. But if their requests are reasonable, then  
21 somebody is going to have to work extra and get this done.

22 **MR. PINE:** Along that lines, Your Honor, we had  
23 identified a smaller subset of the emails that excluded some of  
24 the more general distribution emails and it went -- it was  
25 about -- took off, like, 60 percent of the emails. If we could

1 start with just that smaller subset that would probably be  
2 helpful right there.

3       **THE COURT:** I understood what we were looking at were  
4 ones either to or from Ms. McComber herself or where she was  
5 part of a small group.

6       **MR. PINE:** Right.

7       **THE COURT:** Not a big distribution. Not a massive --

8       **MR. PINE:** Right. That's the smaller group we're  
9 talking about because the ones that Ms. McComber -- she  
10 reviewed, were 3,000 some, but those included some larger  
11 distribution emails.

12       **THE COURT:** So we're down to the number that Mr. Gray  
13 talked about, of that number.

14       **MR. PINE:** That's helpful right there.

15       **THE COURT:** Okay. Item two, status reports, including  
16 project management status reports -- we talked about some of  
17 this, I'm just going over it again -- for the Ironbridge  
18 contract, technical status reports for the Ironbridge contract,  
19 any other weekly or monthly status reports relating to the  
20 duties and responsibilities of the program manager on the  
21 Ironbridge contract, and monthly COR status reports.

22       So this is one number with really multiple requests under  
23 the umbrella of status reports.

24       Ms. Richman, it would seem to me project management status  
25 reports, what's relevant here would be something related to the

1 program manager.

2 **MS. RICHMAN:** Your Honor, I'd like to turn to  
3 Ms. Weeks who is more familiar with the particular status  
4 reports. I also want to preview that I may step away from the  
5 call with the Court's permission and allow Ms. Weeks to take  
6 over representation.

7 **THE COURT:** Sure.

8 **MS. RICHMAN:** This is an important conversation that I  
9 don't want to attenuate.

10 **THE COURT:** Okay. And if you're done, you could come  
11 back on if we're still on.

12 But, Ms. Weeks, on status reports, can you help me out  
13 here?

14 **MS. WEEKS:** Yes, Your Honor. We are talking about the  
15 status reports listed in item number two of ECF-401, which  
16 would show that relate in any way to the work that Ms. McComber  
17 was doing as program manager, whether she was drafting  
18 reports --

19 **THE COURT:** See, I think this is too broad. That's my  
20 concern. This seems like it's about anybody's work on the  
21 contract.

22 **MS. WEEKS:** Well, Ms. McComber was responsible for  
23 submitting these status reports.

24 **THE COURT:** But that's like being the captain of a  
25 ship. You're not going to be able to prevail on the ground

1 that because she's the captain of the ship she gets credit.

2 You're talking about what work she did personally, aren't you?

3 **MS. WEEKS:** Yes, Your Honor. For any, I mean, her job  
4 was to be the manager of the contract, if that's the captain of  
5 the ship and she was steering the ship, she was doing her job.  
6 To the extent that the status reports reflect what was  
7 happening on the contract that she was responsible for  
8 coordinating, organizing, planning, strategizing, communicating  
9 with the Government on the 14 employees on the Ironbridge  
10 contract, that shows she was doing work. She was not required  
11 to do that work in the SCIF at NSA. She could be doing it  
12 offsite.

13 That is why we asked the Government --

14 **THE COURT:** I don't know what substantive work she  
15 could do offsite, so I don't know if I agree with you. But, I  
16 mean, I think -- understandably, you've painted a very broad  
17 picture of her responsibilities, but this is a very broad  
18 request it seems to me and unduly burdensome and  
19 disproportionate to what it might show that she actually did  
20 for which the -- I'll use the word for which she would be given  
21 some kind of credit, if you will.

22 What I think is reasonable, at this point, is anything  
23 under these umbrellas that show her personal work. It  
24 doesn't -- I don't understand your argument, I guess.

25 The fact that she's in charge of everybody and then let's

1 just say -- what you're talking about would be -- so, let's say  
2 we have Jason Doyle doing X, Y and Z substantively on the  
3 contract, and because she hired Jason Doyle and she's in charge  
4 of the contract that if there's something that Jason Doyle did  
5 she must be doing it too. That doesn't hold up.

6 MS. WEEKS: I don't think that's what we're arguing,  
7 Your Honor. We arguing that if she hired Jason Doyle and there  
8 was work that was done to hire him, train him, and staff him on  
9 the contract --

10 THE COURT: That's different.

11 MS. WEEKS: -- that's what we're talking about, Your  
12 Honor.

13 (Overlapping speakers.)

14 THE COURT: Okay. So let's be reasonable here  
15 because, yes, if she is having a substantive discussion or a  
16 discussion with Mr. Doyle about the contract, of course they  
17 should produce that. But that's really not what number two  
18 asks for.

19 MS. WEEKS: It asked for status reports --

20 (Overlapping speakers.)

21 THE COURT: Go ahead.

22 MS. WEEKS: Status --

23 THE COURT: You asked for technical status reports for  
24 the Ironbridge contract, as if anybody else's work would fall  
25 under that, even if she had nothing to do with it, just because

1 she's in charge.

2 MR. GRAY: Your Honor --

3 MS. WEEKS: Go ahead.

4 MR. GRAY: May I address -- thank you, Ms. Weeks, I  
5 appreciate that. If I can address the technical status reports  
6 narrow, specifically.

7 I mean, for one thing, Ms. McComber has always said,  
8 dating back to her original interview with the NSA, that she  
9 did not do coding on the contract. There was -- Jason Doyle  
10 was the technical lead and the person we also said was the  
11 de~facto program manager. Any technical status reports he  
12 would have been doing I think would have been done by him  
13 onsite at the NSA and he was one of the (inaudible.)

14 There is no reason whatsoever to believe -- I know of no  
15 piece of evidence to indicate that Ms. McComber ever worked up  
16 technical status reports of her own offsite.

17 And, moreover, and this is huge, if she prepared status  
18 reports or any other status reports offsite, those would be  
19 part of the InfoTek corporate records. They would be as  
20 accessible to her as they would be to the Government. And if  
21 that's the case then the Government is not required to produce  
22 them under *Brady*. That is one of the most fundamental  
23 principles of *Brady* law.

24 And we attached these, I think, to my December the 20th  
25 filing, you know, the Government exhibits that showed 24E, 1

1 through 3, that when a new government COR, Erica Heinz,  
2 requested in late March of 2017, that those status reports had  
3 not been done in quite awhile, apparently for six months, and  
4 could someone please produce a status report. And so what  
5 happened, we saw this at trial, we had the testimony about it,  
6 and there were emails introduced relating to this. You saw the  
7 various emails introduced at trial. Some of these were low  
8 side emails in InfoTek itself. She had to reach out to  
9 Mr. Doyle and ask him, can you mockup a few bullet points for  
10 me on this. And he said -- after asking for clarification  
11 about what exactly she wanted on it, he managed to do it within  
12 a matter of minutes, and then he transmitted it to her, and she  
13 transmitted it directly to Ms. Heinze.

14 And so that's one of the reasons for my frustration. And  
15 I'm sorry to have to use these terms like fool's errand and  
16 wild goose chase, but we repeatedly point out things like this  
17 to the defense. It's there in the record, no status reports  
18 have been requested for six months.

19 And when she gets the email from Ms. Heinze making it  
20 clear that she now does want status reports, when she forwards  
21 it to Mr. Doyle, Ms. McComber, the first thing she says in it  
22 is "Ugh, we've been told we didn't have to do those and now we  
23 have to do them again."

24 And I just don't understand. When we point things out to  
25 the defense, things like that, it seems to float into the air.



1           **THE COURT:** Okay. Let's get back on task.

2           So let's talk about the topic, I understand about -- what  
3 has already been produced or introduced.

4           Project management status reports for the Ironbridge  
5 contract. I don't even know what that is, but if they exist,  
6 how would that be relevant to Ms. McComber? That's the  
7 question. If they involve Ms. McComber somehow, not because  
8 it's her company or she's the program manager, but because she  
9 has something to do with the report it should be produced.

10          I understand the issue of the technical status report she  
11 wasn't able to prepare herself. But if there are any weekly or  
12 monthly status reports related to her duties as the program  
13 manager, monthly COR status reports. I don't know what that  
14 would have to do with her but. . .

15          I think the fact, what's troubling me, Ms. Weeks, there  
16 may well be COR status reports. I don't understand what that  
17 has to do with Ms. McComber. You've got to give me a way to  
18 tie it to Ms. McComber.

19          **MS. WEEKS:** Your Honor, we discussed this at the  
20 December 21st hearing in detail. It was there labeled as the  
21 stoplight chart in an email. It's called the COR monthly  
22 status report. We've gone back and forth I feel on every call.  
23 We go over the same territory again.

24          **THE COURT:** Well, I guess you're not doing a very good  
25 job of explaining it because I apparently don't seem to be

1 getting it.

2 MS. WEEKS: Certainly not. Certainly not, Your Honor.

3 THE COURT: I don't know whether that was an insult  
4 for me -- only one of us at a time. If you're trying to insult  
5 me, that's fine. But, I'm sorry if I don't get your point.

6 I'm not remembering it or understanding it. You made your  
7 argument. And I think that the Government had produced  
8 anything that fell into these categories if it seemed relevant.

9 But now you've given me this very broad request. I'm  
10 trying to work with you. I was actually trying to help you get  
11 what you want. But I need to narrow it, how does it relate to  
12 Ms. McComber? And you still haven't really explained it to me.  
13 If you're willing to narrow it, I'm willing to work with you.

14 MS. WEEKS: Those monthly status reports reflect  
15 openings on the Ironbridge contract which the Government argues  
16 are relevant to whether --

17 THE COURT: But that's number three, wait a second.  
18 That's number three. Hiring and staffing, that's number three.

19 MS. WEEKS: That would cover --

20 THE COURT: I'm talking about number two. All of  
21 these status reports that are of a technical nature.

22 MS. WEEKS: Okay. As long as the Government  
23 understands that three encompasses 2(b), to the extent that  
24 those monthly COR status reports relate, reflect to openings on  
25 the Ironbridge contract, we are happy with the Government

1 having that understanding.

2 The problem is that Mr. Gray made a representation on  
3 December 21st that the Government said, yep, we found that one  
4 COR status report and that was the only one we found.

5 What we keep staying, and I apologize that we are clearly  
6 deficient in explaining this to you, Your Honor, that NSA never  
7 completed the pull and search of documents. Ms. Peacy  
8 explained this morning that they only did so for four of the 12  
9 custodians we're identifying. This particular COR monthly  
10 status report would have been in the possession of Don Pugh,  
11 who is not a custodian that they pulled the records for. All  
12 we are asking is that they go back and complete the search.  
13 That is it.

14 **MR. GRAY:** Your Honor, if I may respond to that very  
15 directly with some help from Ms. Peacy.

16 Ms. Peacy, did we pull the records for Don Pugh?

17 **MS. PEACY:** Yes, I didn't talk about those because  
18 those were not sent in the January time frame. They were sent  
19 in -- hang on just a moment and I can give you a date here.

20 Don Pugh's were sent on 14 November 2022. So we did pull  
21 those and sent those as well, as we did some of the others. I  
22 was just speaking to the ones we sent in that January 10, 11  
23 and 12 of 2023 time frame earlier.

24 **MS. WEEKS:** Can I ask a qualifying question on that?  
25 Was it just emails, or was it also his share drive?

1           **MS. PEACY:** So I have a list of search terms that were  
2 searched against his high side and low side email and his high  
3 side and low side share files from 2016 to 2017.

4           **MS. WEEKS:** Thank you. That's helpful. What about  
5 the remaining custodians on the priority list?

6           **MS. PEACY:** I can go down the list if you want me to  
7 do so.

8           **THE COURT:** Yes, please.

9           **MS. WEEKS:** I think it would be very helpful.

10           **MS. PEACY:** Sure. I'm going to go from the list from  
11 your email. Kristin Mair, all of those documents -- again, it  
12 is the emails, high side and low side, and the shared files,  
13 high side and low side from 2016 to 2107, that I'll be speaking  
14 of on all these people.

15           Kristin Mair was sent on January 11 of 2023, and I have a  
16 list of search terms that were used.

17           Jonathan Smith was sent January 10th, 2023, and again I  
18 have a list of search terms.

19           Jason Doyle, his name did not appear as part of that  
20 August 2022 defense search, so he was not searched as part of  
21 that. His name was not listed in that original that we got in  
22 2022.

23           Regina Shirley, hers were sent on January 11th, 2023.

24           Tiffany Starr-Smith, we ended up doing only her high side  
25 files and emails because we did not have access to the

1 unclassified. They were still pulling the unclassified when  
2 trial started. But those high side files and emails were sent  
3 on the 10th of January 2023.

4 Don Pugh, as I previously stated, was 14 November 2022.

5 Megan Collins was not part of that defense search from  
6 August 2022. However, we did send Access Control records over  
7 on 12/20/2022.

8 Sherry Guinther, there are limited search terms there. We  
9 did not find anything against those search terms. We did send  
10 Access Control records on 12/20/2022 as well for her.

11 Rob Bryant, the only email we found was already sent under  
12 Kristin Mair. They were both on the same email. So that was  
13 sent in the January 2023 time frame.

14 Jason Clark, he was searched. There were two different  
15 tranches sent for Jason Clark. The first tranche was sent on  
16 9 November 2022. The second tranche against those search terms  
17 was sent on 1 January 2023 against the list of search terms I  
18 had.

19 **MR. GRAY:** I'm sorry, that was Jason Doyle?

20 **THE COURT:** Why did we leave out Jason Doyle?

21 **MR. GRAY:** Jason Doyle was the technical lead on the  
22 contract and as we indicated the actual de~facto program  
23 manager.

24 **THE COURT:** Right. But how is it he didn't have --  
25 there was no search for him? So that's who needs to be

1 searched.

2 **MS. PEACY:** I can give you the list of names that we  
3 were given in August of 2022, if you would like.

4 **THE COURT:** No, I'm sure if you didn't search you  
5 didn't have it. But I'm trying to understand how you wouldn't  
6 have had that name? Other than perhaps the Government had  
7 already obtained that information, I don't know.

8 Mr. Gray, do you have anything you can shed light on here?

9 **MR. GRAY:** Not right off, Your Honor, because as I've  
10 indicated it was Mr. Cooch who took on the responsibility of  
11 dealing with these issues while I was dealing with a lot of  
12 motion on papers and things like that.

13 **THE COURT:** Is it possible we can search for Jason  
14 Doyle for some of these topics then?

15 **MR. GRAY:** Yeah --

16 **MS. PEACY:** So we would have to get all of his files.  
17 We don't even have his files that I'm aware of.

18 **THE COURT:** What do you mean?

19 **MS. PEACY:** So his files were not in the list that was  
20 originally requested, so they weren't in the list that our  
21 capabilities director was pulling; the copies of his emails and  
22 shared directories because they're on tapes they have to upload  
23 to us. I don't even have them uploaded so they would have to  
24 pull them and upload them before we could search them.

25 **THE COURT:** How long does that take?

1 MS. PEACY: Are we talking about all of 2016 and '17?

2 THE COURT: I don't know.

3 MR. GRAY: March 2016 through end of September of  
4 2017. That's about 19 months.

5 MS. PEACY: I would think it will take a couple of  
6 weeks. They have to upload them one month at a time. They  
7 have to get the tapes from archives and then upload them one  
8 month at a time.

9 THE COURT: Okay. What are we talking about with  
10 Mr. Doyle? Are these going to be emails, or are these project  
11 management, these topics, project management status reports?  
12 They wouldn't be COR status reports because he wasn't a COR.  
13 Technical status reports? I mean, do any of these fall under  
14 any of the things listed in Paragraph 2 from anybody's  
15 perspective of ECF-401?

16 MR. GRAY: Well, obviously, if there are -- if there  
17 were high side emails from Mr. Doyle to Ms. McComber, they  
18 would be included in her email, high side emails. If there  
19 were low side emails between the two of them, those would be  
20 included in InfoTek's emails, of which some large number, like,  
21 1,800 pages or something was produced of those.

22 So, I mean, a lot of those should have been things that  
23 were -- have already been in a position to be seen. And then  
24 you have to apply to that the further testimony of people like  
25 Jonathan Smith that he did not consider status reports

1 necessary because he and all of these people -- I mean, he  
2 literally worked in that same small NSOC space. These people  
3 were all within 20 to 30 feet of each other or less, within  
4 five feet sometimes, in terms of their locations of their  
5 desks, on a daily basis.

6 **THE COURT:** Ms. Weeks, were you trying to say  
7 something?

8 **MS. WEEKS:** I was just trying to state for the record  
9 that I am shocked to hear that Jason Doyle's documents, emails  
10 and files have not been searched so far in this case. I just  
11 am still processing that. And to the extent that we are taking  
12 back a motion to draft that will be reflected in there and our  
13 concern about that but he was the technical --

14 **THE COURT:** I'm sorry what?

15 **MS. WEEKS:** Basically, Ms. McComber's deputy is the  
16 technical manager and he would almost certainly have documents,  
17 you know, reflecting the work she was doing offsite. And I'm  
18 just --

19 **THE COURT:** Well, I'm surprised, but also, as Mr. Gray  
20 just said, they're captured in other ways because if  
21 Ms. McComber was communicating with Mr. Doyle it would be in  
22 her emails.

23 **MR. GRAY:** Right.

24 **MS. WEEKS:** We've discussed that we're not sure we  
25 have all of the InfoTek emails, Your Honor --



1 (Overlapping speakers.)

2 **THE COURT:** No, but I'm saying -- it sounds upsetting  
3 but on further reflection there's more than one way to get to  
4 the same spot. His may not have been searched but -- and I'm  
5 surprised myself, which is why I raised it, but at the same  
6 time if Ms. McComber were communicating with him it would still  
7 be in her emails.

8 **MS. PEACY:** Your Honor, this is Ms. Peacy. I'm sorry,  
9 I misspoke. That happened before I came on. I'm looking at  
10 the file from Maxine Meade. His files look like they were  
11 pulled and it looks like they were all uploaded on 9 August of  
12 2022. So that may have been before we got -- that would have  
13 been before we got these search terms on August 30th of 2022.

14 **THE COURT:** But they were searched?

15 **MS. PEACY:** They were, yes. I'm showing 2016, 2017, a  
16 few months of 2018, and one month of 2019 were all searched.  
17 And it looks like August 9th of 2022 was the date that anything  
18 was uploaded that they found during that search.

19 **MR. GRAY:** I'm sorry, what was the last date?

20 **MS. PEACY:** August 9th of 2022.

21 **MR. GRAY:** I'm sorry, was the what date or what  
22 happened then?

23 **MS. PEACY:** It looks like that was the date that they  
24 uploaded anything that was found relative to that.

25 **MR. GRAY:** When you say uploaded that you think was

1 found relative to that, you mean uploaded anything that turned  
2 up search terms?

3 **MS. PEACY:** Yes. I don't know what search terms they  
4 were using, I wasn't involved then. The list I have is from a  
5 30 August 2022 hearing. I'm not sure which search terms they  
6 would have searched. But I do have his records, and it does  
7 look like he did produce some things from his record on  
8 August 9th of 2022.

9 **THE COURT:** Well, thank you for the clarification.  
10 So, Ms. Weeks, we can all start breathing again.  
11 (Laughter.)

12 **MS. WEEKS:** Yes.

13 **THE COURT:** Ms. Weeks, let me go back to number two,  
14 this is a big one, if you ask me, the one that's the most  
15 problematic for me. I'm trying to narrow this because I think  
16 it's overbroad, and it doesn't focus enough on Ms. McComber, so  
17 I need your help to direct NSA and Mr. Gray to work on exactly  
18 what? I mean, not everything just because it involves  
19 Ironbridge is going to support your reasons for wanting this  
20 material.

21 For example, technical reports about the work on the  
22 contract that she's not involved in have nothing to do with  
23 her. Even though you want to say to me that, well, she's in  
24 charge. It's not enough.

25 So I would say that if there are any reports, status

1 reports, or other reports relating to her duties and  
2 responsibilities as program manager then I agree that those  
3 should be produced.

4 I would agree that any reports that involve work she did  
5 should be produced. I just don't know if these are the right  
6 characterizations.

7 **MS. WEEKS:** Okay. Your Honor, we are happy to strike  
8 these if that would help move these along. What you just  
9 articulated in terms of status reports relating to the duties  
10 and responsibilities of a program manager, that is what we are  
11 looking for, and is required by the contract --

12 (Overlapping speakers.)

13 **THE COURT:** That would make sense to me. Anything  
14 relating to the duties and responsibilities of the program  
15 manager on this contract, that would be something I agree with  
16 you about.

17 So I don't know how to go about effectuating that,  
18 Mr. Gray. Here's where you come in or your colleagues at NSA.

19 **MR. GRAY:** Your Honor, I would --

20 **THE COURT:** You may have done this already. I'm not  
21 saying you didn't, but your claim has been that some of this,  
22 if not all of this, has already been done. But then that's a  
23 different issue. If that's your point, I'll address that when  
24 and if you confirm that.

25 But the bottom line is if it hasn't already been produced

1 or searched for, it's something I agree that the defense should  
2 get.

3           **MR. GRAY:** Right, Your Honor. But what I want to  
4 emphasize is that Jason Doyle, for example, testified  
5 extensively at trial and indicated that his contacts or taking  
6 things up with Ms. McComber were pretty limited and, you know,  
7 we had Rob Bryant and all sorts of people, Jonathan Smith, who  
8 testified that there was nothing approaching the need of the  
9 number of hours that she was billing NSA for her work as a  
10 program manager.

11           **THE COURT:** I understand that. But they're asking for  
12 if there are reports relating to her status reports. I don't  
13 know -- Ms. Weeks, are you saying these would be her reports or  
14 NSA's reports or both?

15           **MS. WEEKS:** Both.

16           **THE COURT:** Okay. So any reports Ms. McComber would  
17 have filed, I mean, I guess Ms. McComber could have them. But  
18 if NSA is in possession of any reports either that it received  
19 from Ms. McComber or that it sent to Ms. McComber relating to  
20 her responsibilities and duties as program manager on this  
21 contract, they may well have already been produced. I'm not  
22 for a minute suggesting they weren't, but I need somebody to  
23 verify. And if they haven't been, then we need to see if they  
24 aren't. I don't know how to go about that.

25           **MR. GRAY:** Yes, in terms of, you know, this sort of --

1 it lays out why I made the statement that I made in my response  
2 to Ms. Weeks in an email on January 4th. At this point, I  
3 don't see any way, unfortunate in some way as it is, to avoid  
4 the need for us to put together a filing of affidavits from  
5 Mr. Cooch, Ms. Peacy, and Maxine Meade, who was the previous  
6 NSA agent who handling sort of the earlier stages of this in  
7 the late summer and fall of 2022, that lays out what was done  
8 and what has been produced in a comprehensive systematic way.

9 I can tell you that, you know, Ms. Weeks is certainly  
10 aware of this, there is a lengthy list of NSA personnel that  
11 were, you know, asked to either search their files or if they  
12 had left had their files searched.

13 And in particular the defense, I'm sure, included the name  
14 of every single COR, administrative COR, probably technical COR  
15 like Jonathan Smith, and all of their files were searched for  
16 the search terms. So I think we're going to find out  
17 ultimately that all of this was done.

18 Just to go back to something like this one stoplight  
19 document, that is not a document that was prepared by  
20 Ms. McComber. It was a document that was generated by  
21 Mr. Pugh. And then further, as I recall, Mr. Pugh, as you may  
22 remember, actually left -- he retired from the NSA I think in  
23 August of 2017. And these were, you know, ongoing things  
24 that -- the only real significance that Ms. Weeks and  
25 Ms. Richman have been able to tease out of the stoplight report

1 was that there was one vacancy on the Ironbridge contract at  
2 the time, and this gets into relevance and materiality.

3 As I indicated, the Government introduced at trial an  
4 exhibit that showed all of the positions that got filled on the  
5 Ironbridge contract when Ms. McComber was the program manager  
6 in 2016, 2017. She, herself, testified extensively about who  
7 had to be replaced or who had to be massaged in order to be  
8 kept from leaving. That covers dozens of pages of trial  
9 transcript.

10 **THE COURT:** Okay. I don't mean to be critical.  
11 You're all repeating yourself. We know that. That doesn't  
12 necessarily foreclose their, at this stage, I mean, that ship  
13 has sailed to some extent but now we're in a different phase.  
14 And the fact that those people testified or you introduced  
15 exhibits doesn't foreclose that there may be other documents  
16 regarding staffing and hiring, for example item number three,  
17 or status reports relating to the responsibilities and duties  
18 of the program manager.

19 So I realize that you may have already produced this. I  
20 certainly am sensitive to that, and I'm sorry about it. I  
21 mean, I don't know how to solve that. It's been presented in a  
22 different format for a different issue.

23 If you've got it, I don't know how to tell NSA to search  
24 for this kind of because I don't know what it involves. I  
25 don't know if it's that shared drive would have status reports

1 about the -- you could do a search on program manager. Maybe  
2 that would then lead to or status reports, slash, program  
3 manager, however you could search, we would have at least a  
4 reasonable effort I'd say to find something if it exists.

5 Is that doable, Ms. Peacy or Mr. Pine?

6 **MS. PEACY:** We can do it against the UFOUO. I believe  
7 it's been done against the classified already. Some of the  
8 search terms we had included résumé, status reports, program  
9 management plan, and we had already searched those. So I  
10 believe most of that has already been done. But we can do it  
11 against the UFOUO emails as well.

12 **THE COURT:** Okay. So I'm interested in basically  
13 asking NSA to search for anything that would concern the duties  
14 and responsibilities of the program manager, which is item 2C,  
15 status reports, documents relating to hiring and staffing,  
16 that's number three. I don't know if you have this document,  
17 ECF-401. That's what I'm reading from. Paragraph 2(c) and  
18 number three, this may have been searched for but not  
19 necessarily with a fine eye to the defense's request about now  
20 trying to focus on reducing the Government's claim on the  
21 amount of loss.

22 And number four item, communication on materials relating  
23 to the project management review held in July 2017 and any  
24 other PMRs. I don't know what that's about, Ms. Weeks. I know  
25 that we talked about that, if memory serves me correctly, in

1 December. But would you like to elucidate what the relevance  
2 of this is?

3 **MS. WEEKS:** There was a project manager review that  
4 was undertaken in July 2017. It was a meeting that  
5 Ms. McComber attended with several NSA officials about the  
6 program management on the contract. It's directly relevant to  
7 the work that Ms. McComber was doing. We are asking for the  
8 communication surrounding that meeting between the people that  
9 were at the meeting that would be discussing Ms. McComber's  
10 work on the contract. And there are indications that there are  
11 documents that have been produced --

12 **THE COURT:** I'm sorry, do we know who those people  
13 are? Could you tell us --

14 **MS. WEEKS:** Yes, I can get a list. I need to go back,  
15 but I can get a list.

16 **THE COURT:** Okay. So --

17 **MR. GRAY:** Your Honor.

18 **THE COURT:** Yes.

19 **MR. GRAY:** This relates to Government's Exhibit 24, I  
20 believe it's H at trial, which was the program management  
21 PowerPoint slides for July 28th, 2017. And I believe we  
22 introduced emails, which there were a handful, back and forth  
23 between Ms. McComber and Mr. Doyle discussing that they were  
24 going to be having this quarterly review and her tasking him  
25 with, like, pulling together stuff for it. I think the emails



1 were introduced at trial.

2 I think we introduced -- we certainly introduced this 24H,  
3 the PMR itself.

4 It was, I think, three PowerPoint slides, and it was  
5 divided into two categories, one of which was program  
6 management functions, one of which was everything else, and it  
7 listed what had been done as part of the program management  
8 functions, or at least what InfoTek either considered  
9 significant or it could come up with. It was, like, signing  
10 off on two contract modifications, which, moreover, were  
11 Mr. Craig Plunkett's responsibility anyway and something else  
12 kind of generic.

13 But this is literally the document itself, the program  
14 management review PowerPoint slides are a Government's exhibit  
15 at trial. Exhibits relating to this are a Government's exhibit  
16 at trial. It shows that for a three-month period in which  
17 Ms. McComber billed 460 hours of program management time, which  
18 she was present at the NSA pretty rarely, they can only come up  
19 with, like, a couple of things to indicate what she's been  
20 doing. What else is there to dig into on this issue? Of  
21 course it was testified to by Mr. Doyle. Certainly  
22 Ms. McComber had the ability to offer any testimony she wanted  
23 about it.

24 I mean, that is the reason for my frustration here. We  
25 keep pointing these things out and they -- the defense is still

1 trying to suggest there's something more to be learned here  
2 beyond this.

3           **THE COURT:** Mr. Gray, did you say that -- you said it  
4 was Government Exhibit 24. Any -- the communications or  
5 materials relating to it weren't introduced in evidence, were  
6 they?

7           **MR. GRAY:** I think some of the emails were, yes,  
8 between Ms. McComber and Mr. Doyle.

9           **MS. WEEKS:** That's not what we're asking for.

10           **MR. GRAY:** What in the world are you asking for?

11           **MS. WEEKS:** We're asking for the communications  
12 between the NSA officials who were at the meeting about the  
13 PMR. So if, for example, I'm just saying names, I don't know  
14 if these people were there.

15           If Kristin Mair emails Don Pugh and says, wow, this is how  
16 the PMR went, Jacky is sure doing a lot of work, or has other  
17 things to add to it. That would be relevant.

18           You're saying you've produced documents and emails from  
19 Ms. McComber to Mr. Doyle. We are asking for NSA emails, if  
20 any exist, about the PMR that relate to Ms. McComber's work  
21 that would be relevant to the work that she's doing.

22           **MR. GRAY:** That's Kristin Mair, who was the  
23 contracting officer's representative at the time, and as we've  
24 already said a number of times during the course of this  
25 conference call her records were searched for with the agreed

1 search terms.

2 (Overlapping speakers.)

3 MS. WEEKS: And I think we need to see the search  
4 terms for this to be productive.

5 (Overlapping speakers.)

6 MR. GRAY: I'm sorry, what?

7 MS. WEEKS: I was saying, I think we need to go back  
8 and look at the search terms for this to be productive. We are  
9 asking for -- we weren't involved in drafting those search  
10 terms before trial and we're asking for the issue of loss that  
11 was not an issue when those search terms were being drafted for  
12 trial to search for these particular emails.

13 So if we need to provide search terms for this we are  
14 really happy to do so.

15 MR. GRAY: Obviously, the first thing to do is  
16 confirm, A) that the stuff was searched for and generated by  
17 the NSA to the Government, and B) that because of the  
18 representation by the defense that they didn't want anything  
19 more that it wasn't like, you know, sitting in the Government's  
20 inbox or something when that drawbridge was pulled up by the  
21 defense.

22 But then, you know, I mean, after that obviously there  
23 were a limited number of Government people who attended that  
24 meeting that's reflected in the documents that are already in  
25 evidence as Government's exhibit trial exhibits in this case.

1 And I just think we're going to find out that all of them  
2 have already had their records searched for and produced, and  
3 the only thing is to make sure that when the plug got pulled  
4 there was nothing that was left in transit with our office at  
5 that point.

6 MS. WEEKS: And that the search terms would have hit  
7 on this particular topic, but yes.

8 THE COURT: So what search terms are you looking for?

9 MS. WEEKS: Program management review, PMR, in or  
10 around -- probably just those two things because -- among the  
11 custodians that were at the meeting. There's also indications  
12 that there might be more than one PMR. I don't want to limit  
13 it to that period. For the indictment period the word "program  
14 management review," in quotes, and "PMR," in quotes.

15 THE COURT: So is it program management or project  
16 management? Because they're very different. So the project is  
17 about the project. But what I thought you wanted was about the  
18 program manager?

19 MS. WEEKS: Your Honor, I think it would be helpful to  
20 search those because I think people naturally conflate the  
21 terms and misspeak sometimes when they mean to say program  
22 manager. I think that's common even for people at NSA. So I  
23 would ask that project management review and program management  
24 review be searched.

25 THE COURT: So --

1           **MR. GRAY:** Your Honor, if I can -- I'm looking for  
2 this so just give me a second here because I think this may  
3 help you to understand this request in particular because I  
4 literally attached the relevant Government's exhibit trial  
5 exhibits to my filing on December 20th. Hang on for a moment.  
6 Let me see if I can find it. Maybe it was the 9th.

7           **THE COURT:** While he's looking, Ms. Weeks, but you're  
8 saying you don't know who the people were at the meeting, so  
9 how many people are you talking about?

10           **MS. WEEKS:** It's no more than four or five people,  
11 Your Honor. I'd be happy to exchange search terms with  
12 Mr. Gray.

13           **MR. GRAY:** Yeah, I mean, I think this is going to turn  
14 out to be a dry hole. It's going to be a dry hole that can be  
15 scooped out relatively quickly.

16           **THE COURT:** So I need to be clear. How are we leaving  
17 this? We're going to hang up and everyone else -- I'm going to  
18 hang up. Everyone else is going to stay on the line and make  
19 sure that Mr. Pine and Ms. Peacy have contact information for  
20 defense counsel so that a prompt arrangement can be made for  
21 defense counsel to go out to NSA and review the emails that  
22 were the ones that were involving just Ms. McComber, or a small  
23 group that included Ms. McComber during the relevant period of  
24 time.

25           And I think that number was in the 400 range, right?

1           **MR. GRAY:** Yes, Your Honor, that was approximately 470  
2 emails. I want to just emphasize this, too, that when we keep  
3 saying that, oh, the NSA shouldn't be taking so much time to  
4 get things done, bear in mind that if the defense -- and this  
5 goes back to something that I said in an email to Ms. Weeks  
6 that I don't think she fully understood around December 5th,  
7 December the 6th. If they don't just blanket say we want every  
8 single email that she sent, but if they exercise some  
9 professional judgment in terms of whether this is significant  
10 or not. And so, for example, if we can get her 172 emails down  
11 to about 60 or 50, that would greatly expedite things.

12           **THE COURT:** Right. So they should be judicious in the  
13 choice of what they want?

14           **MR. GRAY:** Right.

15           **THE COURT:** Otherwise, this is just a process that I  
16 cannot totally control by any stretch.

17           **MR. GRAY:** It is significantly --

18           **THE COURT:** If it isn't really something helpful, best  
19 to leave it. But what I understood that of these 475 plus  
20 emails, they may have some of them anyway.

21           **MR. GRAY:** Yes, that is true.

22           **THE COURT:** These are not necessarily emails that were  
23 never produced.

24           **MR. GRAY:** Right. And then --

25           **THE COURT:** Yes, go ahead.

1           **MR. GRAY:** One final thing I want to make clear is  
2 when I advised Ms. Weeks in that email on December the 5th or  
3 December the 6th that we were not going to make a blanket  
4 commitment in advance to produce anything they asked for, my  
5 concern was I didn't want them coming out and then just saying,  
6 okay, we're just going to reiterate Ms. McComber's demand that  
7 we get 1,300 emails because I knew that would take months.  
8 And, moreover, I knew by that point of having looked at a lot  
9 of them, and having seen Ms. McComber's list, that the vast  
10 majority of those were of no significance whatsoever.

11           So that was what I was trying to indicate even then,  
12 looking ahead to Ms. Derrow's visit, that the defense has  
13 significantly within its own control the ability to expedite  
14 this process by focusing on things that really matter.

15           **THE COURT:** Okay. The next thing that's going to  
16 happen -- that's number one. The next thing that's going to  
17 happen is that we need NSA, with the help of both sides, to  
18 conduct a search. This may have already taken place, but  
19 verify if it has, verify if it hasn't. If it hasn't, it needs  
20 to be done: So-called monthly status reports relating to the  
21 duties and responsibilities of the program manager of the  
22 Ironbridge contract, and communications or materials that  
23 pertain to the project management review in July of 2017.  
24 That's among NSA people who were participants, four or five of  
25 them. And it's identified as project management review but it

1 could also be a program management review. Because right or  
2 wrong, the terms are sometimes used interchangeably.

3 **MR. GRAY:** Just to be clear, Your Honor, as I'm  
4 saying, this document is in evidence and I think it's  
5 Government's Exhibit 24H.

6 **THE COURT:** Right. The document is, but what they  
7 were seeking, isn't that the communications or materials among  
8 personnel at NSA about it.

9 **MR. GRAY:** Okay. All right.

10 **THE COURT:** Which is related to what's in evidence but  
11 not the same.

12 **MR. GRAY:** Yes, it's the same. I do believe those  
13 have already been covered by the searches of Kristin Mair  
14 and --

15 **THE COURT:** And if anybody can verify that, that's  
16 fine. So then we don't need to do it again. It's just that  
17 I'm not in a position to verify it that's for sure, so I can't  
18 say. I'm simply addressing what the request is. And if you're  
19 able to establish this has been done, that's fine. I'm not  
20 asking the Government to do it twice. I just can't tell you  
21 off the top of my head, I have no clue if this has been done.

22 Is this helpful? Are we finished?

23 **MR. GRAY:** I think we're finished as to that issue.

24 **THE COURT:** Is there any other issue? Okay.

25 **MR. GRAY:** No, Your Honor. Aside from the fact that I



1 think the Government is also going to have to turn its  
2 attention over the next few weeks to preparing a summary  
3 document that lays out in systematic form what was searched for  
4 when and all that so that's part of the record.

5 **MS. WEEKS:** Your Honor, I'm sorry, I realized I was on  
6 mute. I was trying to speak. I think you might have left out  
7 request three from your list that you were just discussing from  
8 the -- relating to hiring and staffing of Ironbridge contract.

9 **THE COURT:** I think you're right. I did. And I  
10 apologize. I did leave it out by mistake. Yes, number three  
11 also. Again, this may already have been done so I'm not asking  
12 the Government to do it twice. Number three, once again, is  
13 documents relating to hiring and staffing of Ironbridge. Once  
14 again, limited to Ms. McComber. I'm not talking about just  
15 anybody, the whole point is what she did. All of this is with  
16 an eye towards what Ms. McComber was doing.

17 So and, Mr. Gray, I know that your point is that this has  
18 been covered at the trial. I just don't know if all of this  
19 was, like anything else, you picked what you wanted but I don't  
20 know that that doesn't mean there weren't other things.

21 **MR. GRAY:** Your Honor, what I indicated in particular  
22 this was the centerpiece of Ms. McComber's direct examination  
23 by Mr. Ahlers was talking about all of the people that either  
24 were hired during the 2016/2017 period, or that were thinking  
25 of leaving that she supposedly had to dissuade from it.

1 (Overlapping speakers.)

2 **THE COURT:** Right. I understand that, so the answer  
3 may be this has already been produced. I'm simply saying I  
4 can't obviously speak to that. I have no idea. So if you're  
5 able to tell the defense that this search was made and  
6 everything was -- I mean, I know you weren't personally  
7 involved, Mr. Cooch was. But if you can confer with NSA and  
8 determine that the search was made.

9 I mean, listen, nobody can demand perfection but what we  
10 were expecting is a serious and comprehensive effort. I'm  
11 not -- mistakes get made. There's a lot of material here, but  
12 I think the expectation would be that this is something that  
13 was actually searched for, not just -- the Government obviously  
14 was -- you're right, this was a big part of the testimony. But  
15 I don't know what that means in terms of what the search was.

16 **MS. WEEKS:** Your Honor, this is Ms. Weeks, to the  
17 extent, Mr. Gray, you've mentioned several times Ms. McComber's  
18 testimony about who was hired onto the contract, that does not  
19 speak to who else might have been interviewed for those  
20 positions. I don't think that was all encompassing because of  
21 the work that was done on hiring.

22 (Overlapping speakers.)

23 **MR. GRAY:** Go ahead.

24 **THE COURT:** Well, I'm --

25 (Overlapping speakers.)

1           **THE COURT:** I was going to say this, I obviously, I  
2 mean, excuse me, a year after the trial ended I could not swear  
3 to anything she or anything anyone else said at that trial.  
4 But I think the gist of the point was that if she's interviewed  
5 people she didn't hire, but spent time doing it, that's the  
6 kind of thing she testified about. I think that was what  
7 Mr. Gray was trying to capture.

8           **MR. GRAY:** Right, Your Honor. And, in particular, as  
9 I mentioned -- actually I don't think I mentioned this in one  
10 of the filings, I mentioned it in the discussion last week,  
11 Ms. McComber admitted on cross-examination that two-thirds of  
12 the people who were brought aboard during her time as program  
13 manager already worked for InfoTek in some other capacity. So  
14 she didn't need to go out and locate them and recruit them.  
15 That is her testimony in the trial record.

16           **THE COURT:** So that's, from my perspective at the  
17 moment, neither here nor there. The issue is, the request is  
18 if they may well have been covered in her testimony, but I  
19 can't say, I'm not obviously able to say whether all of the  
20 documents relating to hiring and staffing, as captured by  
21 number three on ECF-401, were, in fact, produced or searched  
22 for. So if that's something that's been done then it's done.  
23 But if it wasn't done, then I'm asking that it be done because  
24 that was a big part of her responsibility from what I gather  
25 that didn't have to be done at NSA.

1       So I know the people at NSA seem quite capable, and they  
2 have very detailed records of what they did. So if this can be  
3 reviewed that would be helpful.

4       I don't know if that was a search term or was it a search  
5 term or how we can search for it but that's what they're asking  
6 for, and I don't think it's unreasonable.

7           **MR. GRAY:** Yeah, I mean, the one -- well. Let me  
8 mention this because this does occur to me too, since these  
9 people are contractors they're not NSA employees. I guess some  
10 kind of résumé would have been transmitted to NSA. But they  
11 would have presumably personnel files at ITK itself and  
12 anything related to, like, outreach to identify these people,  
13 or setting up lunch meetings, or, you know, for the few who, I  
14 think it was, like, maybe three or four who weren't already  
15 InfoTek employees, that's all in InfoTek's file. And a lot of  
16 that wouldn't even be at the NSA's file.

17           **MS. WEEKS:** Mr. Gray, we are not asking the Government  
18 to produce anything that's not in their custody or control.  
19 We're asking the Government and NSA to conduct a search for  
20 these documents. If they don't exist, please let us know.

21           **MR. GRAY:** Well, that's fine. But perhaps you should  
22 search the files at InfoTek yourself of all of the names and  
23 employees in that testimony to determine what records you have  
24 related to that. If I have to issue a formal request for that,  
25 I'm glad to do it.

1           **MS. WEEKS:** Mr. Gray, we are talking about interviews  
2 of potentially other people for these positions. I just said  
3 we're not limiting this to the people who were actually hired.  
4 That's not how hiring works. Generally, there are multiple  
5 interviews of candidates and people aren't hired. So the fact  
6 that somebody at InfoTek was hired, does not mean that there  
7 weren't interviews of people who weren't at InfoTek. We're  
8 simply asking the Government to run the search terms.

9           **MR. GRAY:** Yes, Ms. Weeks, what you're not  
10 understanding is if there were people that she looked at for  
11 example but decided not to nominate to the NSA, the NSA will  
12 have no record of that. That will be in InfoTek's own file.

13           **MS. WEEKS:** Well, again, we're not asking you to  
14 produce anything that's not in the Government's custody or  
15 control. To the extent the NSA interviewed candidates that  
16 Ms. McComber presented to them, we would like the records of  
17 the evidence that Ms. McComber was doing offsite.

18           **THE COURT:** Okay. It doesn't necessarily sound like  
19 there will be anything. It doesn't necessarily sound like this  
20 is something that wasn't already done. But I think it's  
21 important to verify. So let's get that done.

22           Is anybody ordering a transcript of this hearing?

23           **MS. WEEKS:** Yes, Your Honor.

24           **THE COURT:** It's really a conference. But it's  
25 definitely a conference. Okay. So that's helpful because if

1 there's any misunderstanding of what I said, then we'll have a  
2 record.

3 Again, my only concern as this juncture two hours into  
4 this discussion is, is everybody on the same page and knows  
5 what homework they have? And what can I do to compel NSA to  
6 move quickly?

7 **MR. GRAY:** Yes, well, I think the first thing is we --  
8 Mr. Pine will have to set up what's necessary to do the read-in  
9 for people to come out there and review the emails. And if the  
10 defense would care to send us a letter or email summarizing  
11 what they believe they're specifically looking for. For  
12 example, on four that they're specifically looking for internal  
13 emails among this limited handful of NSA participants giving  
14 their reactions to what was said at that meeting.

15 **THE COURT:** Well, they said that already. So I don't  
16 think they need to say it again. It's in there.

17 **MR. GRAY:** All right. I hope Mr. Pine got that down.

18 **THE COURT:** You can look at ECF-401.

19 **MR. GRAY:** Yes. As to hiring and staffing, we're  
20 looking for communications as to the people who are all  
21 discussed at trial and were the subject of a  
22 Government's exhibit at trial --

23 **THE COURT:** No, they're looking for people that she  
24 maybe brought to NSA as candidates who weren't ultimately  
25 hired. That's what I understood.

1           **MS. WEEKS:** We're looking for documents relating to  
2 any hiring and staffing for the Ironbridge contract. Just  
3 because their name might have come up at trial, if there are  
4 documents showing the work that Ms. McComber was doing to hire  
5 or train or onboard those personnel, it didn't stop at hiring.  
6 Her duties extended to onboarding and making sure they were  
7 trained and their clearances were, you know, up to date. That  
8 would be the evidence that we're looking for here. It's not  
9 just limited to the names of the people that were hired.

10           **THE COURT:** So what Mr. Gray is saying is she's a  
11 contractor, not an employee. If they didn't have anything to  
12 do with it they may never know who else she saw, and she would  
13 know who else she saw.

14           **MR. GRAY:** Right.

15           **THE COURT:** But it's possible that she brought people  
16 to them that they rejected or didn't want or whatever. So  
17 that's what the defense is looking for. If there is fine, if  
18 there isn't, fine.

19           **MR. GRAY:** I just want to note this point, Your Honor,  
20 that what you just made was very relevant. That the defense  
21 has the ability to get specific information from Ms. McComber  
22 to the effect that, oh, yes, I remember that I did propose so  
23 and so for that and the Government rejected him. And, yes, I  
24 can show you where in my InfoTek emails that's reflected and/or  
25 at the very least I can give you the name so that the

1 Government can then run that name through its systems to  
2 identify this system.

3 **MS. WEEKS:** Your Honor, I don't think the burden is on  
4 Ms. McComber here to this extent.

5 **MR. GRAY:** We're never getting that kind of specific  
6 information from the defense that might help us to locate this  
7 stuff with a lesser expenditure of effort and without casting  
8 as wide a net --

9 **THE COURT:** Well, it's not a matter of burden, I  
10 guess, Ms. Weeks, what I think Mr. Gray is saying is that the  
11 posture we're now in, and I don't mean to be crass in any  
12 particular light, but let's not play games.

13 If you know who you have in mind then he's asking it would  
14 help if you could identify people that you actually did have in  
15 mind so they could look for that because it's a guessing game  
16 to some extent at this point. It's a big, massive amount of  
17 material and you're sending them off on, you know, just this  
18 effort to try to sort of find a needle in a haystack of some  
19 person she may have sent a name about. And if you knew who it  
20 was, and she would know who she's talking about, then it would  
21 help. But it's not a matter of burden, it's just a matter of  
22 starting to work together now to get this done.

23 If you have names you should tell them so they can try to  
24 search for them and substantiate your claim. But. . .

25 **MS. WEEKS:** Yes, Your Honor.



1           **THE COURT:** It's possible that the Government is in  
2 possession of names it got from Ms. McComber that it chose  
3 not -- I don't know how it works there so I can't answer this.  
4 I don't know if ultimately she could bring somebody to -- I  
5 mean, obviously get a clearance, that's a problem. But if she  
6 identifies employees, potential people to work on the contract  
7 and NSA has the last word, they might have information relevant  
8 to this point. And I think that's what Ms. Weeks is asking  
9 for. And she may not know at this point it's so long ago.

10           **MS. WEEKS:** Correct.

11           **THE COURT:** So I don't, you know, I don't want to  
12 spend time going over the merits. I've said what I've said in  
13 terms of the wisdom of my ruling. That's what I meant by the  
14 merits.

15           But I was persuaded on this point. I'm thinking that this  
16 has already been done, so if there's a way that the Government  
17 can just establish that it did look for this kind of  
18 information. I'm not asking them to do it again. But I can't  
19 say that because I'm not involved in the nitty-gritty of the  
20 discovery process.

21           So I think everybody understands what I'm saying and I  
22 think it's -- I think it's -- the rulings are the rulings.

23           **MR. GRAY:** Okay.

24           **THE COURT:** So I'm going to hang up and that means  
25 everybody else stays on the line to get the ball rolling.

1           **THE COURT REPORTER:** Your Honor, should I stay on or  
2 should I hang up?

3           **THE COURT:** Let me ask the lawyers.

4           **MR. GRAY:** I think at this point we can shorten the  
5 length of the transcript by not keeping Ronda around, and I  
6 think we can do an exchange of correspondence if necessary to  
7 make sure we're all on the same page.

8           **THE COURT:** Is everyone in agreement on that?  
9 Ms. Weeks, are you okay with that?

10          **MS. WEEKS:** Yes, Your Honor.

11          **THE COURT:** I'm signing off and that means the court  
12 reporter is, too. Thank you all very much. Bye-bye.

13          (Conference adjourned at 12:04 p.m.)  
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CERTIFICATE OF OFFICIAL REPORTER

I, Ronda J. Thomas, Registered Merit Reporter, Certified Realtime Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 10th day of January 2024.

*Ronda J. Thomas*

Ronda J. Thomas, RMR, CRR  
Federal Official Reporter

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<b>U</b> <b>us...</b> [11] 28/24 29/15 29/25 34/9 50/4 54/23 61/4 64/13 76/20 78/10 80/6 <b>use</b> [12] 8/24 9/14 13/7 15/4 28/6 34/6 39/4 39/20 41/19 42/12 45/20 48/15 <b>used</b> [3] 40/4 52/16 72/2 <b>useful</b> [1] 40/20 <b>using</b> [2] 17/4 58/4 <b>usually</b> [1] 23/9	68/17 73/19 <b>wanting</b> [1] 58/19 <b>was</b> [246] <b>wasn't</b> [10] 12/17 12/18 37/17 37/18 49/11 55/12 58/4 67/19 75/23 77/20 <b>waste</b> [1] 35/7 <b>way</b> [14] 20/19 25/2 28/6 29/21 35/6 37/25 38/3 44/16 49/17 57/3 61/3 61/3 61/8 81/16 <b>ways</b> [1] 56/20 <b>we</b> [219] <b>We'd</b> [1] 5/8 <b>we'll</b> [9] 6/16 6/18 7/10 9/13 9/13 21/15 33/10 40/2 78/1 <b>we're</b> [45] 4/11 5/3 8/25 9/1 9/10 9/11 14/10 15/12 16/21 16/25 16/25 33/14 35/16 35/23 39/4 39/8 40/14 40/22 42/13 43/8 43/12 44/11 46/6 46/11 51/9 56/24 61/16 62/13 66/9 66/11 67/10 68/1 69/17 71/6 72/23 76/19 77/3 77/7 77/13 78/19 79/1 79/8 80/5 80/11 82/7 <b>we've</b> [7] 22/25 33/12 37/14 48/22 49/22 56/24 66/23 <b>Wednesday</b> [1] 8/14 <b>week</b> [5] 3/2 25/15 34/15 35/5 75/10 <b>weekly</b> [2] 43/19 49/11 <b>weeks</b> [27] 1/16 2/21 31/10 35/19 44/3 44/5 44/12 47/4 49/15 55/6 56/6 58/10 58/13 60/13 61/2 61/9 61/24 63/24 69/7 70/5 71/2 73/2 74/16 77/9 80/10 81/8 82/9 <b>Weil</b> [2] 2/23 28/1 <b>well</b> [39] 4/13 5/15 6/3 7/8 8/2 8/6 10/13 12/20 15/15 17/10 18/5 20/22 21/14 26/2 27/19 28/13 37/5 41/21 42/6 42/9 44/22 49/16 49/24 51/21 53/10 55/16 56/19 58/9 58/23 60/21 63/11 74/24 75/18 76/7 76/21 77/13 78/7 78/15 80/9 <b>went</b> [10] 8/9 18/13 19/5 30/22 30/22 31/18	32/1 34/19 42/24 66/16 <b>were</b> [125] <b>weren't</b> [13] 3/5 9/18 18/13 54/20 60/22 66/5 67/9 73/20 74/6 76/14 77/7 77/7 78/24 <b>what</b> [157] <b>what's</b> [6] 36/18 39/14 43/25 49/15 72/10 78/8 <b>whatever</b> [7] 14/21 18/22 19/14 24/21 29/9 42/14 79/16 <b>whatsoever</b> [3] 12/5 47/14 71/10 <b>when</b> [44] 3/3 8/7 8/9 10/19 10/21 11/18 16/21 18/14 18/21 23/17 24/15 27/12 28/2 29/25 30/12 30/23 30/25 31/4 31/18 32/25 32/25 33/19 33/23 34/3 34/10 34/13 34/16 38/13 41/24 48/1 48/19 48/20 48/24 53/1 57/25 59/23 62/5 67/11 67/20 68/3 68/21 70/2 71/2 73/4 <b>where</b> [10] 5/6 21/1 25/23 26/16 30/24 38/9 42/13 43/4 59/18 79/24 <b>whether</b> [13] 5/16 9/16 9/25 16/20 16/23 21/8 21/8 28/24 44/17 50/3 50/16 70/9 75/19 <b>which</b> [40] 3/13 5/9 6/19 9/14 9/20 10/16 11/10 15/20 16/20 18/16 18/23 23/1 23/4 25/1 26/20 29/3 29/19 29/20 32/13 34/21 36/4 36/18 36/24 40/10 44/15 45/20 45/20 50/15 55/20 57/5 58/5 63/14 64/20 64/22 65/5 65/6 65/10 65/16 65/17 72/10 <b>whichever</b> [1] 6/16 <b>while</b> [6] 6/12 7/12 27/22 33/12 54/11 69/7 <b>who</b> [50] 2/9 2/13 2/18 6/11 12/22 13/22 17/3 17/15 21/4 21/7 26/14 26/14 29/12 29/13 31/9 36/9 36/9 36/9 36/11 42/15 42/16 44/3 51/11 53/25 54/10 60/7 61/5 61/6 62/6 62/7 64/12 66/12 66/22 67/23 69/8 71/24 74/18 74/19 75/12 76/13 76/14 77/3	77/7 78/20 78/24 79/12 79/13 80/13 80/19 80/20 <b>Who is</b> [1] 31/9 <b>who's</b> [1] 15/25 <b>whoa</b> [4] 13/19 13/19 15/18 15/18 <b>whole</b> [5] 5/14 22/14 31/6 38/6 73/15 <b>why</b> [10] 12/16 12/18 18/23 29/25 33/18 34/24 45/13 53/20 57/5 61/1 <b>wide</b> [1] 80/8 <b>wild</b> [2] 34/7 48/16 <b>will</b> [27] 4/8 6/11 7/9 8/1 15/21 15/22 16/7 16/8 19/7 19/8 19/25 20/11 22/17 22/24 24/10 26/11 29/17 33/19 38/6 40/17 45/21 55/5 56/12 77/11 77/12 77/19 78/8 <b>willing</b> [5] 24/22 37/16 38/25 50/13 50/13 <b>wisdom</b> [1] 81/13 <b>wish</b> [4] 4/2 16/9 39/22 40/3 <b>wishes</b> [2] 20/17 24/8 <b>within</b> [4] 48/11 56/3 56/3 71/13 <b>without</b> [3] 19/21 35/12 80/7 <b>witnesses</b> [2] 36/9 36/22 <b>won't</b> [2] 7/5 9/13 <b>wonder</b> [1] 9/25 <b>wondering</b> [1] 21/6 <b>word</b> [7] 13/7 20/7 28/5 28/6 45/20 68/13 81/7 <b>words</b> [2] 15/8 17/15 <b>work</b> [48] 8/4 9/11 16/3 19/24 23/7 23/14 23/22 24/6 24/11 24/25 24/25 25/1 25/7 25/24 29/6 33/17 33/23 36/11 36/13 37/1 37/2 37/4 42/21 44/16 44/20 45/2 45/10 45/11 45/14 45/23 46/8 46/24 50/10 50/13 56/17 58/17 58/21 59/4 60/9 64/7 64/10 66/16 66/20 66/21 74/21 79/4 80/22 81/6 <b>worked</b> [6] 12/22 28/14 36/9 47/15 56/2 75/13 <b>working</b> [4] 5/17	25/16 33/15 37/14 <b>works</b> [2] 77/4 81/3 <b>world</b> [1] 66/10 <b>worry</b> [2] 4/11 26/4 <b>worth</b> [1] 10/16 <b>would</b> [99] <b>wouldn't</b> [3] 54/5 55/12 76/16 <b>wow</b> [1] 66/15 <b>write</b> [2] 7/20 7/23 <b>writing</b> [3] 38/3 38/18 39/22 <b>writing to</b> [1] 39/22 <b>written</b> [1] 40/18 <b>wrong</b> [2] 20/16 72/2 <b>wrote</b> [2] 10/25 12/4
<b>V</b> <b>vacancy</b> [1] 62/1 <b>value</b> [3] 30/1 33/22 34/13 <b>various</b> [1] 48/7 <b>vast</b> [1] 71/9 <b>verify</b> [6] 60/23 71/19 71/19 72/15 72/17 77/21 <b>very</b> [25] 4/24 7/15 8/10 9/22 11/17 22/14 23/21 24/11 25/1 25/7 25/17 25/23 27/12 35/16 45/16 45/17 49/24 50/9 51/14 52/9 68/16 76/2 79/20 79/25 82/12 <b>virtue</b> [1] 13/10 <b>visit</b> [1] 71/12 <b>volume</b> [3] 11/1 30/6 31/22 <b>volumes</b> [1] 30/24 <b>voluminous</b> [1] 27/25				<b>Y</b> <b>Yeah</b> [6] 6/7 13/12 16/10 54/15 69/13 76/7 <b>year</b> [1] 75/2 <b>years</b> [2] 11/4 34/16 <b>yep</b> [1] 51/3 <b>yes</b> [47] 2/6 2/24 13/13 14/7 14/13 15/13 17/24 18/10 18/19 19/2 19/18 25/5 27/5 28/17 35/4 37/7 37/24 39/6 39/17 40/6 41/11 44/14 45/3 46/15 51/17 52/8 57/15 58/3 58/12 60/25 64/14 64/18 66/7 68/7 70/1 70/21 70/25 72/12 73/10 77/9 77/23 78/7 78/19 79/22 79/23 80/25 82/10 <b>yet</b> [3] 4/17 4/18 35/22 <b>you</b> [215] <b>You'll</b> [1] 26/15 <b>you're</b> [30] 7/1 7/4 7/15 11/6 15/9 23/16 24/14 24/19 27/10 27/22 28/13 34/3 34/25 35/15 44/10 44/25 45/2 46/1 49/24 50/4 50/13 62/11 66/18 69/7 72/18 73/9 74/4 74/14 77/9 80/17 <b>you've</b> [13] 16/3 18/7 23/13 24/21 27/12 38/17 39/13 45/16 49/17 50/9 62/23 66/18 74/17 <b>your</b> [110] <b>yourself</b> [2] 62/11 76/22